

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

---

**DONNA THURGOOD SOLOMON,**

Plaintiff,

vs.

**PIONEER ADULT  
REHABILITATION CENTER,**

Defendant.

**AMENDED SCHEDULING ORDER**

Case No. 1:04 CV 102 DAK

Judge Dale A. Kimball  
Magistrate Judge Brooke C. Wells

---

---

Previously, this court granted Defendant's Motion to Strike Trial Date.<sup>1</sup> Pursuant to this order both parties have conferred and submitted respective proposed scheduling orders. After considering the parties' arguments the court enters the following amended scheduling order. Defendant's Motion to Amend/Correct is granted in part.<sup>2</sup> The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

\*\*ALL TIMES 4:30 P.M. UNLESS INDICATED\*\*

**1. PRELIMINARY MATTERS**

**DATE**

Nature of claim(s) and any affirmative defenses:

---

<sup>1</sup> Docket no. 94.

<sup>2</sup> Docket no. 97.

- |  |                      |
|--|----------------------|
| a. Was Rule 26(f)(1) Conference held?                        | <u>03/03/05</u>      |
| b. Has Attorney Planning Meeting Form been submitted?        | <u>03/08/05</u>      |
| c. Was 26(a)(1) initial disclosure completed?                | <u>04/15/05</u>      |
| <b>2. DISCOVERY LIMITATIONS</b>                              | <b><u>NUMBER</u></b> |
| a. Maximum Number of Depositions by Plaintiff(s)             | <u>10</u>            |
| b. Maximum Number of Depositions by Defendant(s)             | <u>10</u>            |
| c. Maximum Number of Hours for Each Deposition               | <u>7</u>             |
| d. Maximum Interrogatories by any Party to any Party         | <u>25</u>            |
| e. Maximum requests for admissions by any Party to any Party | <u>25</u>            |
| f. Maximum requests for production by any Party to any Party | <u>no maximum</u>    |
| <b>3. AMENDMENT OF PLEADINGS/ADDING PARTIES</b>              |                      |
| a. Last Day to File Motion to Amend Pleadings                | <u>08/01/05</u>      |
| b. Last Day to File Motion to Add Parties                    | <u>08/01/05</u>      |
| <b>4. RULE 26(a)(2) FROM EXPERTS</b>                         |                      |
| a. Plaintiff   | 1/31/07              |
| b. Defendant   | 2/14/07              |
| c. Counter Reports   | 2/21/07              |
| <b>5. OTHER DEADLINES</b>                                    |                      |

- a. Discovery to be completed by:
  - i. Fact discovery 12/31/06
  - ii. Expert discovery 1/31/07
- b. (Optional) Final date for supplementation of disclosures and discovery under Rule 26(e) 1/31/07
- c. Deadline for filing dispositive or potentially dispositive motions 3/2/07

**6. SETTLEMENT / ALTERNATIVE DISPUTE RESOLUTION**

- a. Referral to Court-Annexed Mediation No
- b. Referral to Court-Annexed Arbitration No
- c. Evaluate case for Settlement/ADR on: 03/2/07
- c. Settlement probability: unknown

**7. TRIAL AND PREPARATION FOR TRIAL:**

- a. Rule 26(a)(3) Pretrial Disclosures
  - i. Plaintiff 6/25/07
  - ii. Defendant 7/9/07
- b. Objections to Rule 26(a)(3) Disclosures
- c. Special Attorney Conference on or before 7/23/07
- d. Settlement Conference on or before 7/23/07

e. Final Pretrial Conference

8/06/07 at 2:30 p.m.

f. Trial

Length

Time

Date

i. Bench Trial

ii. Jury Trial

4 days

8:30

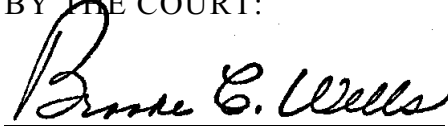
8/20/07

**8. OTHER MATTERS:**

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial.

Dated this 11th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells", written over a horizontal line.

Brooke C. Wells

U.S. Magistrate Judge

# UNITED STATES DISTRICT COURT

Northern

District of

U.S. DISTRICT COURT  
Utah

UNITED STATES OF AMERICA

V.

Rafael Vasquez Espinoza

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX105CR000125-001

USM Number: 12982-081

Ronald Fujino

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC § 1326	Re-Entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/5/2006

Date of Imposition of Judgment

Signature of Judge

Paul Cassell

Name of Judge

US District Judge

Title of Judge

Date

9/7/06

DEFENDANT: Rafael Vasquez Espinoza  
CASE NUMBER: DUTX105CR000125-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

24 months to run concurrently with the sentence imposed in case number 1:06-cr-00002-002 PGC

☒ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to San Diego, Ca. as possible to facilitate family visitation.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Rafael Vasquez Espinoza  
CASE NUMBER: DUTX105CR000125-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

None

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☐ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Rafael Vasquez Espinoza  
CASE NUMBER: DUTX105CR000125-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
--------	----------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.



DEFENDANT: Rafael Vasquez Espinoza  
CASE NUMBER: DUTX105CR000125-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 6 - 9

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

STEVEN B. KILLPACK, Federal Defender (#1808)  
ROBERT K. HUNT, Assistant Federal Defender (#5722)  
**UTAH FEDERAL DEFENDER OFFICE**  
Attorneys for Defendant  
46 West Broadway, Suite 110  
Salt Lake City, Utah 84101  
Telephone: (801) 524-4010  
Facsimile: (801) 524-4060

FILED  
U.S. DISTRICT COURT

2006 SEP 11 P 12:33

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

---

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, NORTHERN DIVISION**

---

UNITED STATES OF AMERICA,  
  
Plaintiff,

-vs-

GABRIEL JUAN MARTINEZ-RAMIREZ,  
aka: MIGUEL GONZALEZ CRUZ,  
  
Defendant.

**ORDER TO CONTINUE  
JURY TRIAL**

Case No. 1:05CR00144 DAK

Based on the motion to continue trial filed by defendant in the above-entitled case, and  
good cause appearing,

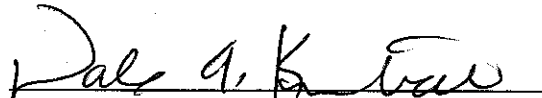
It is hereby ORDERED that the trial previously scheduled for September 15, 2006, is  
hereby continued and a change of plea hearing is set for November 6, 2006 at 3:30 p.m.

The Court finds the ends of justice served by such a continuance outweigh the best  
interests of the public and the defendant in a speedy trial. Accordingly, the time between the date

of this order and the new trial date is excluded from speedy trial computation.

DATED this 11<sup>th</sup> day of September, 2006.

BY THE COURT:

  
HONORABLE DALE A. KIMBALL  
United States District Court Judge

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

DAVID H. HENDERSON,	:	
Plaintiff,	:	Civil No. 1:06-CV-11 DAK
vs.	:	
JO ANNE B. BARNHART,	:	ORDER TO REMAND
Commissioner of	:	
Social Security,	:	Honorable Dale A. Kimball
Defendant.	:	

---

Based upon Defendant's Unopposed Motion To Remand and good cause appearing therefor,

IT IS HEREBY ORDERED that pursuant to sentence four of 42 U.S.C. § 405(g), this case is remanded to the Commissioner for further administrative proceedings. IT IS FURTHER ORDERED that judgment shall be entered in accordance with Fed. R. Civ. P. 58, consistent with the United States Supreme Court's decision in Shalala v. Schaefer, 509 U.S. 292, 296-302 (1993).

Accordingly, this action is remanded to the Social Security Administration.

DATED this 11th day of September, 2006.



---

Honorable Dale Kimball  
United States District Court

FILED  
U.S. DISTRICT COURT  
**RECEIVED**

2006 SEP 11 A 10:23  
SEP 07 2006

Gifford W. Price, Esq. (Bar No. 2647)  
Jeffrey R. Olsen (Bar No. 9079)  
MACKEY PRICE THOMPSON & OSTLER  
350 American Plaza II  
57 West 200 South  
Salt Lake City, UT 84101  
Phone: (801) 575-5000

DISTRICT OF UTAH  
BY: DEPUTY CLERK  
OFFICE OF  
**JUDGE TENA CAMPBELL**

Attorneys for Defendant Patrick M. Brody

---

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION

---

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

MERRILL SCOTT & ASSOCIATES, LTD.,  
MERRILL SCOTT & ASSOCIATES, INC.,  
PHOENIX OVERSEAS ADVISERS, LTD.,  
PATRICK M. BRODY, DAVID E. ROSS II,  
AND MICHAEL G. LICOPANTIS,

Defendants

**ORDER**

Civil No. 2:02 CV 0039 TC

Judge: Tena Campbell  
Magistrate Judge David Nuffer


---

Based on stipulation of the parties and good cause appearing,

IT IS HEREBY ORDERED that Defendant Patrick M. Brody may have to and including Friday, September 29<sup>th</sup> 2006 in which to file his Memorandum in Opposition to the Motion for Summary Judgement filed by the Plaintiff originally on or about June 1, 2006.

DATED this 11 day of September, 2006.

BY THE COURT

By:   
Honorable Tena Campbell  
United States District Court Judge

Stephen J. Trayner, #4928  
STRONG & HANNI  
Attorneys for Defendant Clinipad  
Corporation  
3 Triad Center, Suite 500  
Salt Lake City, Utah 84180  
Telephone: (801) 532-7080  
Fax: (801) 596-1508

---

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
UTAH, CENTRAL DIVISION

---

KIMBERLY ANN (MARTENS) CARTER,

Plaintiff,

v

CLINIPAD CORPORATION UNITED  
STATES OF AMERICA, ex rel  
DEPARTMENT OF VETERANS AFFAIRS  
and DOES AND ROES 1-3.

Defendants.

**ORDER STRIKE HEARING**

Case No. 2:02 CV 0458ST

Judge Ted D. Stewart

---

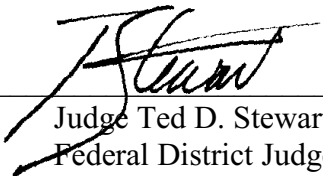
The parties' Stipulation and Motion to Strike Hearing on Defendants' Motions for  
Summary Judgment, having been duly submitted, and good cause therefore appearing,



IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the hearing date of Septemeber 21, 2006 on the Motions for Summary Judgment of the United States of America and Clinipad Corporation shall be stricken in order to allow mediation of this matter.

IT IS FURTHER ORDERED that oral argument on the Motions for Summary Judgment of the United States of America and Clinipad Corporation shall be reset upon further notice of this Court for a date at least ten (10) days from September 21, 2006 in the event the mediation does not resolve this matter.

DATED this 11th day of September, 2006.

By \_\_\_\_\_  
Judge Ted D. Stewart  
Federal District Judge

FILED  
U.S. DISTRICT COURT

2006 SEP 11 A 9:54

Brent O. Hatch (5715)  
HATCH, JAMES & DODGE  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101  
Telephone: (801) 363-6363  
Facsimile: (801) 363-6666

DISTRICT OF UTAH

BY: \_\_\_\_\_  
CLERK

**DENIED**

*Stewart*  
*9/7/06*

Paul D. Cullen, Sr. (pro hac vice)  
David A. Cohen (pro hac vice)  
Joyce E. Mayers (pro hac vice)  
THE CULLEN LAW FIRM, PLLC  
1101 30<sup>th</sup> Street, NW, Suite 300  
Washington, D.C. 20007  
Telephone: (202) 944-8600  
Facsimile: (202) 944-8611

*Attorneys for Plaintiffs*

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

---

OWNER-OPERATOR INDEPENDENT  
DRIVERS ASSOCIATION, INC. , and  
THOMAS SHUTT, WILLIAM PIPER,  
DON SULLIVAN, SR., JAMES  
MURPHY, and WALTER WILLIAMS  
individually, and on behalf of all  
others similarly situated,

Plaintiffs,

vs.

C. R. ENGLAND, INC.,

Defendant.

**PLAINTIFFS' MOTION TO  
STRIKE DEFENDANT'S REPLY  
BRIEF IN SUPPORT OF ITS  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Case No. 2:02cv950 TS

Judge Ted D. Stewart  
Magistrate Judge Nuffer

---

Plaintiffs, pursuant to DUCivR 56-1, move to strike Defendant C.R. England Inc.'s  
("C.R. England's") Reply Memorandum in Support of its Motion for Partial Summary Judgment

(Doc. 221). DUCivR 56-1 expressly limits C.R. England to ten (10) pages of argument in its Reply Memorandum. In contravention of the Rule, C.R. England's Reply Memorandum is 42 pages, all of which is argument. The Court should therefore strike C.R. England's Reply Memorandum for failing to comply DUCivR 56-1.

Further arguments in support of Plaintiffs' Motion are set forth in the Memorandum in Support filed concurrently herewith.

DATED this 2<sup>nd</sup> day of June, 2006.

Respectfully submitted,

/s/ Brent O. Hatch  
HATCH, JAMES & DODGE, P.C.  
Brent O. Hatch

THE CULLEN LAW FIRM, PLLC  
Paul D. Cullen, Sr.  
David A. Cohen  
Joyce E. Mayers

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of June, 2006, I caused to be served a true and correct copy of the foregoing by CM/ECF to the following:

James S. Jardine, Esq.  
RAY QUINNEY & NEBEKER  
36 South State Street, Suite 1400  
Salt Lake City, Utah 84111

Robert L. Browning, Esq.  
SCOPELITIS GARVIN LIGHT & HANSON  
10 West Market Street #1500  
Indianapolis, Indiana 46204-2965

Daniel R. Barney, Esq.  
SCOPELITIS GARVIN LIGHT & HANSON  
1850 M. Street, Suite 280  
Washington D.C. 20036-5804

Nelson L. Hayes, Esq.  
CR ENGLAND & SONS INC.  
4701 W. 2110 South  
P.O. Box 27728  
Salt Lake City, Utah 84127-0728

/s/ Brent O. Hatch

FILED  
U.S. DISTRICT COURT

2006 SEP -7 P 3:49

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

DISTRICT OF UTAH, CENTRAL DIVISION

BY: DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARK A. WALLACE,

Defendant,

)  
)  
) ORDER FOR SUPPLEMENTAL  
) PROCEEDING

)  
) Case No. 2:03CR00723-001

)  
) U.S. Magistrate Robert Braithwaite  
)

THE UNITED STATES OF AMERICA TO DEFENDANT MARK A. WALLACE:

IT IS ORDERED that, pursuant to the foregoing motion, and good cause appearing, you appear in person before United States Magistrate Judge Alba of this court at the time and place shown below to answer questions under oath concerning your property.

DATE: October 26, 2006  
TIME: 9:00 a.m.  
PLACE: Room 246, U.S. Courthouse  
350 South Main Street  
Salt Lake City, Utah

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending the hearing.

If you have been personally served with this order and you fail to appear,

the court may order a warrant for your arrest.

DATED this 20<sup>th</sup> day of Aug, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'S. Alba', is written over a horizontal line.

Samuel Alba, Magistrate Judge  
United States District Court

416.WP

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

ANDREA LIENDER,

Plaintiff-Intervenor,

vs.

BODY FIRM AEROBICS, INC., d/b/a  
GOLD'S GYM,

Defendant.

ORDER

Case No. 2:03-CV-846 TC

---

This matter came before the court on a status conference held on September 6, 2006. Based on the parties' representations, and for the reasons stated at the conference, the court ORDERS as follows:

1. Defendant's objection to Magistrate Judge Alba's oral order compelling disclosure of tax returns is due on September 20, 2006. Plaintiffs' reply is due September 27, 2006. Defendant may file a response to the reply no later than October 5, 2006. A hearing on the objection is scheduled for October 16, 2006, at 2:30 p.m.

2. Magistrate Judge Alba's Order requiring Defendant to pay sanctions is stayed until the court resolves the Defendant's objection to the Order. The briefing and hearing

schedule listed immediately above also applies to the objection to the sanctions order.

3. All pre-trial disclosure deadlines are stricken. New deadlines will be set after the currently pending motions and objections have been resolved. A final pre-trial conference is set for March 22, 2007, at 2:30 p.m. A five-day jury trial is set to begin April 16, 2007, at 8:30 a.m.

SO ORDERED this 11th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge



D. GILBERT ATHAY (0143)  
43 East 400 South  
Salt Lake City, Utah 84111  
(801) 363-7074  
Attorney for Jody Bratcher

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	ORDER OF CONTINUANCE
Plaintiff,	:	
v.	:	
JODY BRATCHER,	:	Case No. 2:04CR00286DAK
Defendant.	:	JUDGE DALE A. KIMBALL

---

Based upon the motion of the defendant, Jody Bratcher, through his lawyer D. Gilbert Athay, stipulation of Vernon Stejskal, Assistant United States Attorney and finding good cause, the court grants the defendant's motion to continue. Moreover, the court finds that the defendant's request for additional time is reasonable and justifies his motion for a continuance. The hearing will be re-scheduled with the cooperation and availability of counsel for the parties.

Dated this 11th day of September, 2006.



---

THE HONORABLE DALE A. KIMBALL  
UNITED STATES DISTRICT COURT JUDGE

FILED  
U.S. DISTRICT COURT

2006 SEP 11 P 1:47

DISTRICT OF UTAH

CLERK

JOHN T. CAINE #0536  
RICHARDS, CAINE & ALLEN  
Attorneys for Defendant  
2550 Washington Boulevard  
Ogden, Utah 84401  
Telephone: (801) 399-4191

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	ORDER ON MOTION TO
	)	CONTINUE SENTENCING DATE
Plaintiff,	)	
vs.	)	
CORY NANCE,	)	Case No. 2:04CR00291DB
	)	Judge Dee Benson
Defendant.	)	

THIS matter having come before the Court on Motion of the defendant. The court being fully advised in the premise and having no objection, hereby grants the defendants motion and vacates the sentencing date of September 12<sup>th</sup>, 2006 and orders that sentencing be held at least 60 days thereafter.

*Sentencing set for 11/14/06  
@ 3:00 p.m.*

DATED this 11 day of September 2006

*Dee Benson*  
HONORABLE DEE BENSON  
United States District Court Judge  
District of Utah

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing  
Order to:

Mark Hirata  
Assistant United States Attorney  
185 So. State Street, #400  
Salt Lake City, UT 84111

Postage prepaid, on this \_\_\_\_ day of September 2006.

\_\_\_\_\_  
Secretary

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA,  Plaintiff,  vs.  MANUEL BERNAL NORIEGA,  Defendant.	ORDER VACATING TRIAL AND TOLLING TIME   Case No. 2:04-CR-524 TS
--	---

This matter came before the Court on September 11, 2006, for a Final Pretrial Conference. The Court finds as follows: On August 29, 2006, the Court ordered a warrant issued for Defendant.<sup>1</sup> The Defendant's whereabouts are unknown and cannot be determined by due diligence. The Defendant is absent from this case within the meaning of 18 U.S.C. § 3161(h)(3)(B). It is therefore

ORDERED that the trial set to begin on September 25, 2006, at 8:30 a.m. is VACATED. It is further

---


<sup>1</sup>Docket No. 37.

ORDERED that, pursuant to 18 U.S.C. § 3161(h)(3)(A), the period of delay resulting from the absence of Defendant shall be excluded in computing the time within which trial in this case must commence. It is further

ORDERED that the government shall notify the Court within ten days if the Defendant is apprehended in order to schedule further proceedings.

DATED September 11, 2006.

BY THE COURT:



---

TED STEWART  
United States District Judge

FILED  
U.S. DISTRICT COURT

2006 SEP -7 P 2:13

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ROMAN,

Defendant.

Case #: 2:04CR00544-TS

ORDER OF FORFEITURE  
TO BE INCLUDED  
AND ATTACHED  
TO THE JUDGMENT

JUDGE: TED STEWART

BY:                       
DEPUTY CLERK

IT IS HEREBY ORDERED that:

Pursuant to Fed. R. Crim. P. 32.2(b)(3), the Preliminary Order of Forfeiture shall become final as to the Defendant and the forfeiture shall be included and attached to the judgment.

The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 7<sup>th</sup> day of September, 2006.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART, Judge  
United States District Court

Rebecca C. Hyde (#6409)  
SKORDAS, CASTON & HYDE, LLC  
9 Exchange Place, #1104  
Salt Lake City, Utah 84111  
Telephone: (801) 531-7444  
Facsimile: (801) 531-8885

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	<b>ORDER UNSEALING</b>
	:	<b>DOCUMENTS</b>
vs.	:	
	:	
MICHAEL JOHN NIKOLS	:	Case No.2:04 CR 786
	:	
Defendant.	:	Judge Paul G. Cassell

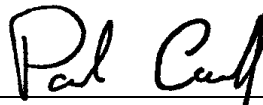
---

Based on the Motion to Unseal Documents filed by the defendant in the above-entitled case, and good cause appearing,

It is hereby ORDERED that the Title Report and Bond, documents 134 and 135 in the above caption matter, be unsealed.

DATED this 11th of September, 2006.

BY THE COURT:



---

JUDGE Paul G. Cassell  
United States District Court Judge

**CERTIFICATE OF MAILING/HAND DELIVERY**

I hereby certify that on the 30th day of August, 2006, a true and correct copy of the foregoing Order Continuing Trial was electronically delivered, hand delivered or mailed, postage prepaid, addressed as follows:

Chad Platt  
Attorney for the United States  
185 South State Street, Suite 400  
Salt Lake City, Utah 84111

s/ Rebecca C. Hyde



FILED  
U.S. DISTRICT COURT

2006 SEP 11 A 9:54

DISTRICT OF UTAH

MARY C. CORPORON #734  
Attorney for Defendant  
CORPORON, WILLIAMS & BRADFORD, P.C.  
405 South Main Street, Suite #700  
Salt Lake City, Utah 84111  
Telephone: (801) 328-1162  
Facsimile: (801) 328-9565

**SO ORDERED**

  
**TED STEWART**  
United States District Judge

Date 9/7/06

---

IN THE UNITED STATES DISTRICT COURT,  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,  
  
Plaintiff,

-vs-

BRANDON KEITH THOMPSON,  
  
Defendant.

:  
: **MOTION TO**  
: **CONTINUE SENTENCING**  
:  
:  
:  
: Case No. 2:04 CR 795 TS  
:  
: Judge Ted Stewart  
: Judge Magistrate Brooke C. Wells  
:

---

DEFENDANT TO THE ABOVE-ENTITLED ACTION, Brandon Keith Thompson, by and through his counsel of record, Mary C. Corporon, hereby moves this Court to continue the sentencing hearing presently scheduled on September 25, 2006 at the hour of 2:00 p.m., based upon the need to have the expert, a psychologist, called at the time of sentencing. Said expert is out of town and not available to be present at the sentencing hearing, due to a commitment in another case.

DATED this 6<sup>th</sup> day of September, 2006.

CORPORON, WILLIAMS & BRADFORD, P.C.

/s/ Mary C. Corporon

MARY C. CORPORON

Attorney for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was e-filed and a copy submitted to:

ROBERT E. STEED  
Assistant U.S. Attorney  
United States Attorney's Office  
185 South State Street, #400  
Salt Lake City, UT 84111-1506

on this 6<sup>th</sup> day of September, 2006.

/s/ P. Spiers

Kimberly D. Washburn (Bar No. 6681)  
LAW OFFICE OF KIMBERLY D. WASHBURN, P.C.  
405 East 12450 South, Suite A  
P.O. Box 1432  
Draper, Utah 84020  
Telephone: (801) 571-2533  
Facsimile: (801) 571-2513

Attorney for Plaintiffs, Angelo Checora, Sr., *et al.*

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

ANGELO CHECORA, SR., as an	:	
individual; and AMANDA MAHKEWA as	:	
the legal guardian of AVERY CHECORA,	:	<b>ORDER ON DEFENDANT'S MOTION</b>
COREY CHECORA, EMMILIO	:	<b>FOR SUMMARY JUDGMENT</b>
CHECORA, and ANGELO S. CHECORA,	:	
JR., individuals,	:	
	:	
Plaintiffs,	:	Judge Dale A. Kimball
	:	
v	:	Magistrate David Nuffer
	:	
UNITED STATES OF AMERICA,	:	Case No. 2:04CV00395 DAK
	:	
Defendant.	:	

---

The hearing on the Defendant's Motion for Summary Judgment was held on July 11, 2006 pursuant to notice, the Honorable Dale A. Kimball presiding. The Plaintiff appeared through his attorney, Kimberly D. Washburn. The Defendant appeared through its attorneys, John K. Mangum and Kevin Jones. The Court having heard the arguments and proffers of counsel, and having reviewed the file and the pleadings contained therein, based thereon and good cause appearing

therefore;


IT IS HEREBY ORDERED:

1. The Defendant's motion for summary judgment is DENIED with regard to the first cause of action of Plaintiff Angelo Checora, Sr., claiming Negligence.

2. The Defendant's motion for summary judgment is GRANTED with regard to the Plaintiffs' second cause of action, Negligence and Loss of Support and Parental Consortium. Accordingly, said claim of Plaintiff AMANDA MAHKEWA, acting for the minor children Plaintiffs AVERY CHECORA, COREY CHECORA, EMMILIO CHECORA, and ANGELO S. CHECORA, JR., as their legal guardian, is hereby dismissed with prejudice.

DATED this 11th day of September, 2006.

FOR THE COURT:



---

HONORABLE DALE A. KIMBALL

Approved as to form:

/s/ John K. Mangum  
John K. Mangum, Esq.  
Assistant United States Attorney  
Attorney for Defendant

SOUTHERN UTAH WILDERNESS ALLIANCE *et al.*  
Plaintiffs,  
vs.  
GALE NORTON, in her official capacity as Secretary  
of the Interior, *et al.*,  
Defendants.

The Court having received Southern Utah Wilderness Alliance *et al.*'s Ex Parte Motion to File Overlength Brief, and good cause appearing therefore, it is hereby

ORDERED, that Plaintiffs Southern Utah Wilderness Alliance *et al.* are granted leave to file their Opposition Brief in response to Dominion and EOG's Motion to Intervene in the above-captioned matter that is 17 pages long, exclusive of face sheet.

BY THE COURT

Dale G. Knibball

The Honorable Dale A. Kimball  
United States District Court Judge

Mark M. Bettilyon (4798)  
Carolynn Clark (9852)  
RAY QUINNEY & NEBEKER P.C.  
36 South State Street, Suite 1400  
P. O. Box 45385  
Salt Lake City, Utah 84145-0385  
Telephone: (801) 532-1500  
Facsimile: (801) 532-7543

FILED  
U.S. DISTRICT COURT

2006 SEP -8 P 5:32

CLERK OF COURT

BY:                       
CLERK OF COURT

*Attorneys for Defendant Premier Nutrition, Inc.*

---

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

PREMIER ONE PRODUCTS, INC., a  
Delaware corporation,

Plaintiff,

-vs-

PREMIER NUTRITION, INC., a California  
corporation,

Defendant.

**ORDER OF DISMISSAL  
WITH PREJUDICE**

Civil No. 2:04CV00911 PGC

Judge: Paul G. Cassell

---

Pursuant to 41(a) of the Federal Rules of Civil Procedure, pursuant to a settlement  
agreement entered by the parties, and good cause appearing:

IT IS HEREBY ORDERED that this action is dismissed with prejudice. Each party will  
bear its own fees and costs.

DATED this 7th day of <sup>September</sup>~~August~~, 2006.

BY THE COURT:

  
\_\_\_\_\_  
United States District Judge

Approved as to form:  
TOMSIC LAW FIRM, LLC

/s/ Kristopher S. Kaufman  
Peggy A. Tomsic  
Kristopher S. Kaufman

*Attorneys for Premier One Products, Inc.*

886055

---

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

MERVYN COX

Plaintiff,

vs.

STATE FARM

Defendant.

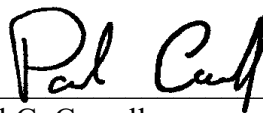
ORDER AMENDING SETTLEMENT  
CONFERENCE PROCEEDINGS

Case No. 2:04-CV-00976 PGC

Pursuant to an amended scheduling order, the trial in this case is scheduled for September 4, 2007. Therefore, the court's Order and referral to settlement Conference Proceedings entered on December 13, 2004 must also be amended. It is hereby ORDERED that counsel shall, on or before June 22, 2007, jointly contact Magistrate Judge Brooke Wells to set the date and time of the Settlement Conference. The Settlement conference shall be conducted on or before July 27, 2007.

DATED this 7th day of September, 2006.

BY THE COURT:



Paul G. Cassell  
United States District Judge



---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

JODI NIX,

Plaintiff,

vs.

PARK CITY MUNICIPAL  
CORPORATION, a Utah municipal  
corporation, LLOYD D. EVANS, an  
individual and Chief of the Park City Police  
Department, PHIL KIRK, an individual and  
a Lieutenant in the Park City Police  
Department, THOMAS B. BAKALY, an  
individual and City Manager of the Park  
City Municipal Corporation,

Defendants.

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT**

Case No. 2:04cv01197TS

District Judge Ted Stewart

Magistrate Judge Samuel Alba

---

This matter was before this Court for a hearing on August 16, 2006, on defendants Park City Municipal Corporation, Lloyd D. Evans (“Chief Evans”), Phil Kirk (“Lieutenant Kirk”), and Thomas B. Bakaly’s (“Mr. Bakaly”) (collectively “defendants”) Motion for Summary Judgment. Plaintiff Jodi Nix (“Ms. Nix”) was represented at the hearing by Todd Utzinger of the Utzinger Law Office. Defendants were represented at the hearing by Judith D. Wolferts of the law firm of Snow, Christensen & Martineau, and Thomas A. Daley, Sr., Assistant City Attorney for Park City Municipal Corporation (the “City”).

Before the hearing, the Court carefully considered the memoranda and other materials submitted by the parties. After hearing oral argument by counsel, and now being fully advised, the Court issues the following Order:

The sole claim in the Complaint against defendants is pursuant to 42 U.S.C. § 1983, and alleges a violation of Ms. Nix's constitutional right to equal protection based on a class-of-one. In addition to other arguments, a defense of qualified immunity has been asserted by Chief Evans, Lieutenant Kirk, and Mr. Bakaly ("individual defendants"), while the City contends it cannot be liable because the individual defendants cannot be liable. The issue before this Court thus is whether or not the individual defendants are entitled to qualified immunity. The resolution of this question is based on an analysis by this Court of whether or not a constitutional or statutory right has been violated.

The Court first finds that the law in the area of a claimed constitutional violation in a class-of-one case requires a showing by plaintiff of ill-will, animus, or malice on the part of the individual defendants. The Court reaches this conclusion based on its understanding of the *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000)( per curium), where the United States Supreme Court forthrightly instructed the circuits that the circuits would have to flesh out the nature of class-of-one actions. Given this instruction by *Olech*, the Tenth Circuit clearly established in *MIMICS, Inc. v. City of Angel Fire*, 394 F.3d 836 (10th Cir. 2001), and more recently in *Orr v. City of Albuquerque*, 417 F.3d 1144 (10th Cir. 2005), that an individual asserting a class-of-one equal protection claim must prove that he or she was singled out for different treatment or persecution due to some personal animosity, ill-will or malice by the

defendant. In the case of *Jennings v. City of Stillwater*, 383 F.3d 1199 (10th Cir. 2004), the court explained the reason for this high standard:

In the wake of *Olech*, the lower courts have struggled to define the contours of class-of-one cases. All have recognized that, unless carefully circumscribed, the concept of a class-of-one equal protection claim could effectively provide a federal cause of action for review of almost every executive and administrative decision made by state actors. It is always possible for persons aggrieved by government action to allege, and almost always possible to produce evidence, that they were treated differently than others, with regard to everything from zoning to licensing to tax evaluation. It would become the task of federal courts and juries, then, to inquire into the grounds for differential treatment and to decide whether those grounds were sufficiently reasonable to satisfy equal protection law. This would constitute the federal courts as general-purpose second-guessers of the reasonableness of broad areas of state and local decisionmaking: a role that is both ill-suited to the federal courts and offensive to state and local autonomy in our federal system.

*Jennings*, 383 F.3d at 1210-1211 (citations omitted).

Plaintiff has relied on a recent case, *Jicarilla Apache Nation v. Rio Arriba County*, 440 F.3d 1202 (10th Cir. 2006), to assert that a different standard now applies in the Tenth Circuit. The Court is not convinced in its analysis of *Apache Nation* that a new standard is now required by the Tenth Circuit or was so required in the past. To the contrary, a careful reading of *Apache Nation* indicates that the court never reached the issue of whether or not ill-will, malice or animus was required. Therefore, this Court cannot rely upon that case to determine whether or not a different standard applies.

Even if this Court were to rely on the standard asserted by plaintiff based on *Apache Nation*, it believes that defendants would only have to advance grounds for plaintiff's dismissal that are not irrational and wholly arbitrary. Plaintiff has failed to overcome defendants' submissions in this regard. A municipality must be allowed to set its own standards for the

carrying of firearms by its police officers. If that standard is higher than that of other communities, that is not an irrational and wholly arbitrary action on the part of that municipality. Further, requiring a police officer to qualify with the weapon that they have been issued is not irrational and wholly arbitrary in this Court's mind.

Relying on the standard of ill-will, this Court also finds that even accepting Ms. Nix's evidence as presented, she has failed to provide evidence of ill-will, malice or animus by any individual defendant. Ms. Nix concedes there was no ill-will by Chief Evans and Mr. Bakaly. As for Lieutenant Kirk, in light of the undisputed facts as to Ms. Nix's performance deficiencies that were noted upon her initial employment and subsequently as a probationary employee, Lieutenant Kirk's actions do not evidence ill-will, malice or animus, but rather an effort to deal with an employee with serious problems.

Although Ms. Nix cites to evidence to attempt to establish a factual dispute with regard to Lieutenant Kirk, none of her cited evidence ties to him and much of it is inadmissible hearsay. The only evidence cited by Ms. Nix that the Court could consider as relevant to this issue would be her representation as to what occurred in the meeting with Lieutenant Kirk that she contends occurred after she was hired. However, a careful analysis of Ms. Nix's own statement as to this meeting concludes only that Lieutenant Kirk said to her that he wanted her to know that if she did not work out during the six-months' initial probationary period, that she would not have a job. This does not evidence ill-will, malice or animus in the context of the situation. In fact, in contrast to her allegations, Ms. Nix's own deposition testimony shows that she answered "I don't know" when she was asked whether: (1) she was claiming that Lieutenant Kirk did not treat her

fairly for malicious reasons, (2) she was claiming that Lieutenant Kirk did not treat her fairly because he bore her some kind of personal ill-will, or (3) she was claiming that Lieutenant Kirk did not treat her fairly because he bore some kind of animosity toward her as an individual. In short, this Court simply is not convinced that there is a disputed material issue of fact over the existence of malice or ill-will or animosity on the part of Lieutenant Kirk.

In addition to the foregoing, Ms. Nix has clearly failed to meet another required element of her claim, *i.e.*, that she was treated differently than other similarly situated individuals. Courts, including the Tenth Circuit, have made it clear that this is an exacting standard, again in an effort to rein in or bring some semblance or reasonableness to class-of-one cases. Ms. Nix has identified only Officer Mike Fierro as being similarly situated to herself. However, the evidence shows that Officer Fierro was in fact not similarly situated to Ms. Nix. The undisputed evidence shows that Officer Fierro qualified with his firearm within six and one-half months of being hired and that he was not removed from probation until after he qualified. By contrast, Ms. Nix still had failed to qualify with her firearm after nine and one-half months of probation. Further, Officer Fierro had only attempted to qualify once before he passed, whereas Ms. Nix had five failed attempts.

This Court further notes that the evidence justifies a conclusion that the decision by Mr. Bakaly as well as Chief Evans to terminate Ms. Nix's employment was based not only on the fact that she had failed to qualify with her firearm, but also on undisputed personnel problems with Ms. Nix. There is no evidence that Officer Fierro had similar personnel issues or, indeed,

any personnel issues. Thus, Ms. Nix has failed to meet her burden to meet the exacting similarly situated standard with regard to a class-of-one case.

The Court therefore finds that no constitutional or statutory right was violated and the individual defendants are entitled to qualified immunity. Further, because there is no constitutional violation by the individual defendants, Ms. Nix's cause of action against the City must fail as well.

Based on the foregoing, and for good cause appearing, IT IS HEREBY ORDERED that:

- (1) Defendants' Motion for Summary Judgment is granted;
- (2) Plaintiff's lawsuit is dismissed with prejudice and on the merits.

DATED this 11th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Ted Stewart", is written over a horizontal line.

Ted Stewart  
United States District Court Judge

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

---

UNITED STATES OF AMERICA,	/	
	/	<b>ORDER CONTINUING</b>
Plaintiff,	/	<b>SENTENCING</b>
vs.	/	
SHAREE MORTON a/k/a JEX, et al.,	/	
	/	Case No. 2:05-CR-0114JTG
Defendant.	/	

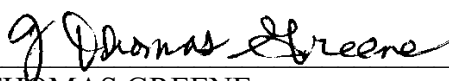
---

BASED UPON the Motion to Continue Sentencing filed by Defendant, and no objection to same, and good cause appearing, and

THE ENDS OF JUSTICE being served in granting this continuance, as a continuance would outweigh the best interest of the public and the Defendant;

IT IS HEREBY ORDERED that the sentencing be continued from September 13, 2006 to October 23, 2006 at 2:30 p.m.

DATED this 11th day of September, 2006.

  
\_\_\_\_\_  
J. THOMAS GREENE  
United States District Court Judge

---

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

---

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
MATTHEW D. BURGESS,  
  
Defendant.

**ORDER GRANTING EXTENSION OF  
TIME FOR SELF-SURRENDER**

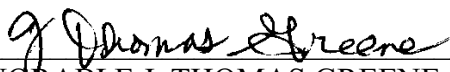
Case No. 2:05CR591 JTG

Honorable J. Thomas Greene, Jr.

Based upon the motion of the Defendant and with good cause appearing;

IT IS HEREBY ORDERED that Defendant shall report to the Bureau of Prisons facility designated by the BOP by **12:00 Noon** institution's local time on September 26, 2006.

DATED this 11th day of September, 2006.

  
\_\_\_\_\_  
HONORABLE J. THOMAS GREENE  
United States District Court Judge



**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, NORTHERN DIVISION**

---

UNITED STATES OF AMERICA,  
  
Plaintiff,

v.

KRISTIE HILL,  
  
Defendant.

**ORDER CONTINUING  
SENTENCING DATE**

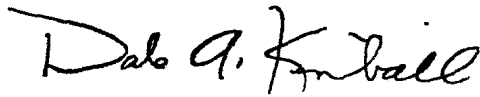
Case No. 2:05-CR-614 DAK

---

Based on the motion filed by the Defendant and good cause appearing,  
  
IT IS HEREBY ORDERED the sentencing date be continued until the 13th day of  
November, 2006, at 2:30 p.m.

DATED this 11th day of September, 2006.

BY THE COURT:



---

DALE A. KIMBALL  
United States District Court Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA,  Plaintiff,  vs.  JOSE HONORIO FLORES-ORTEGA  Defendant.	ORDER CONTINUING TRIAL AND EXCLUDING TIME   Case No. 2:05-CV-672 TS
--	---

The government having filed a Motion to Reconsider<sup>1</sup> the Court's July 21, 2006 Order Granting Defendant's Motion to Suppress<sup>2</sup>, the defendant having filed a response, and it being necessary to resolve this pretrial motion prior to trial, it is therefore

ORDERED that the trial set to begin on September 13, 2006, at 8:30 a.m. is VACATED. It is further

ORDERED that pursuant to 18 U.S.C. § 3161(H)(1)(F) and (J), the delay resulting from the filing of the Motion to its disposition is excluded in computing the time within which the trial must commence. It is further

---


<sup>1</sup>Docket No. 56.

<sup>2</sup>Docket No. 52.

ORDERED that a new trial date will be set as soon as the reconsideration motion is resolved.

DATED September 11, 2006.

BY THE COURT:



---

TED STEWART  
United States District Judge

BRETT L. TOLMAN, United States Attorney, (#8821)  
LANA TAYLOR, Special Assistant United States Attorney (# 7642 )  
Attorneys for the United States of America  
348 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 524-4156

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	
	:	<b>ORDER ON MOTION TO CHANGE</b>
Plaintiff,	:	<b>DEFENDANT'S NAME TO</b>
	:	<b>TRUE AND CORRECT NAME</b>
vs.	:	
	:	
ROGACIANO ALFARO-RIO,	:	Case No. 2:05CR802
	:	
Defendants.	:	Judge Paul G. Cassell
	:	

---

Based upon the Government's Motion to Change Defendant's Name to Correct Name,

It is HEREBY ORDERED that the Court change the defendant's name on the above-mentioned matter from ROGACIANO ALFARO-ROI to show true and correct name on record as RAMSES CORTEZ-GALAVIZ.

DATED this 11th day of September, 2006.

BY THE COURT:



---

JUDGE PAUL G. CASSELL  
United States District Court Judge

---

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

EUSEBIO AGUILERA-MEZA,

Defendant.

**ORDER GRANTING MOTION TO  
WITHDRAW AS COUNSEL**

Case No. 2:05-CR-887 DAK

This matter has been reviewed by the Court on a Motion to Withdraw as Counsel filed by L. Clark Donaldson and Jamie Zenger, appointed counsel for the Defendant, (see docket #175 filed August 25, 2006); the Court being fully advised and granting Mr. Donaldson leave to withdraw on August 28, 2006, and good cause appearing,

IT IS HEREBY ORDERED:

JAMIE ZENGER, Assistant Federal Defender, is hereby granted leave to withdraw as counsel of record for Defendant.

Dated this 11th day of September, 2006.

BY THE COURT:



---

DALE A. KIMBALL  
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

ALBERT DENNIS ZAMPEDRI,	)	
	)	
Petitioner,	)	Case No. 2:05-CV-139 TC
	)	
v.	)	District Judge Tena Campbell
	)	
LOWELL CLARK,	)	<b>O R D E R</b>
	)	
Respondent.	)	Magistrate Judge David Nuffer

---

Petitioner, Albert Dennis Zampedri, an inmate at Central Utah Correctional Facility, petitions for habeas corpus relief.<sup>1</sup> The Court denies him.

BACKGROUND

Petitioner was convicted in Utah state court of aggravated attempted murder and attempted murder and sentenced to terms of five-to-life and one-to-fifteen years. Petitioner appealed to the Utah Court of Appeals, raising the following grounds: (1) The trial court erred in putting the word "knowingly" in certain jury instructions; (2) counsel was ineffective in not challenging those instructions; (3) counsel was ineffective in not moving for directed verdict because insufficient evidence supported the necessary mens rea; and (4) the trial court plainly erred in not entering a directed verdict for the same reason. Affirming the convictions, the court of appeals rejected these challenges.

---

<sup>1</sup>See [28 U.S.C.S. § 2254 \(2006\)](#).

Petitioner then petitioned the Utah Supreme Court for writ of certiorari. However, he named all fresh issues, asserting (1) several instances of ineffective counsel, but not regarding the jury instruction or directed verdict; (2) the trial court's refusal to accept termination of his counsel; and (3) involvement in his case of a drug-addicted police officer. The State asked the court to deny the petition because the issues were all newly raised. The court denied the petition.

Petitioner now requests federal habeas corpus relief, putting forth these grounds: (1) Counsel was ineffective in failing to object (Petitioner does not specify to what), call forth witnesses in his defense, and disclose conflicting interests in other cases; (2) the trial court erred in not granting new counsel upon request; (3) a police officer was using drugs "during trial and pre-arrest" and was involved in witness tampering with Petitioner's counsel; and, (4) the prosecution was involved in witness tampering.

#### ANALYSIS

In denying Petitioner's petition for writ of certiorari, the Utah Supreme Court did not address the merits of Petitioner's arguments. Indeed, the Utah Supreme Court has stated that "issues not raised in the court of appeals may not be raised on certiorari unless the issues arose for the first time out of the

court of appeals' decision."<sup>2</sup> Because Petitioner failed to raise the same issues on petition for writ of certiorari that he raised before the Utah Court of Appeals and his issues did not arise out of the court of appeals's decision, he was procedurally barred from proceeding before the Utah Supreme Court.

"This court may not consider issues raised in a habeas petition 'that have been defaulted in state court on an independent and adequate procedural ground unless the petitioner can demonstrate cause and prejudice or a fundamental miscarriage of justice.'"<sup>3</sup> Here, Petitioner has not argued cause and prejudice to excuse his procedural default. And, his claim of fundamental miscarriage of justice is limited to an unsupported assertion of his innocence. "[T]o claim actual innocence a petitioner must present new, reliable evidence that was not presented at trial."<sup>4</sup> Petitioner has instead done nothing but rehash and attack the evidence at trial.

---

<sup>2</sup>[DeBry v. Noble, 889 P.2d 428, 444 \(Utah 1995\)](#); see also [Coulter & Smith, Ltd. v. Russell, 966 P.2d 852, 856 \(Utah 1998\)](#) ("Review on certiorari is limited to examining the court of appeals' decision and is further circumscribed by the issues raised in the petition.")

<sup>3</sup>[Thomas v. Gibson, 218 F.3d 1213, 1221 \(10th Cir. 2000\)](#) (alteration omitted) (quoting *English v. Cody*, 146 F.3d 1257, 1259 (10th Cir. 1998)).

<sup>4</sup>*Rose v. Newton-Embry*, No. 05-6245, slip op. at 3 (10th Cir. Sept. 5, 2006) (unpublished).



CONCLUSION

IT IS THEREFORE ORDERED that Petitioner's habeas corpus petition under § 2254 is denied.

DATED this 11th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

---

TENA CAMPBELL  
United States District Court

RAYMOND J. ETCHEVERRY (1010)  
KENT O. ROCHE (2783)  
PARSONS BEHLE & LATIMER  
One Utah Center  
201 South Main Street, Suite 1800  
Post Office Box 45898  
Salt Lake City, UT 84145-0898  
Telephone: (801) 532-1234  
Facsimile: (801) 536-6111

Attorneys for Defendants Federal Insurance  
Company and The Sklover Group

FILED  
U.S. DISTRICT COURT

2006 SEP -7 P 3: 54

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

LOUIS BARLOW,

Plaintiff,

vs.

HEALTH EXTRAS, INC.; FEDERAL  
INSURANCE COMPANY, a member of  
The Chubb Group of Insurance Companies;  
and SKLOVER GROUP,

Defendants.

Case No. 2:05cv00189 PGC

**ORDER**

Judge Paul G. Cassell

Magistrate Judge Samuel Alba

On August 31, 2006, at 9:00 a.m., defendant Federal Insurance Company ("Federal") and defendant Sklover Group's ("Sklover") Motion to Disqualify Arbitrator (Docket No. 44) ("Subject Motion") came on for hearing before the Court, with the Honorable Samuel Alba, Magistrate Judge, presiding. Federal and Sklover were represented at the hearing by Raymond J. Etcheverry and Kent O. Roche of Parsons Behle & Latimer, and defendant HealthExtras, Inc. was represented by Mark O. Morris of Snell & Wilmer L.L.P. Plaintiff Louis Barlow ("Barlow") was represented at the hearing

by Jordan Kendell and Robert G. Gilchrist of Eisenberg, Gilchrist & Morton.

The Court, having reviewed the memoranda, affidavits, and exhibits filed in support of and in opposition to the Subject Motion, heard oral arguments of counsel, and issued a bench ruling at the conclusion of the hearing, and being fully advised in the premises,

HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:

1. The Court has continuing jurisdiction over this action, notwithstanding its prior order staying the action pending the completion of arbitration, and the Court has inherent authority to rule upon the merits of the Subject Motion.

2. For the reasons set forth in the Subject Motion and supporting memoranda, L. Rich Humpherys ("Humpherys") should be disqualified from serving as a neutral arbitrator in this matter because his current representation of a plaintiff in a pending insurance bad faith case against The Chubb Group of Insurance Companies and Federal's wholly-owned subsidiaries, Vigilant Insurance Company, on claims that are virtually identical to the claims being asserted by Barlow in this case creates an inherent conflict with his role as a neutral arbitrator in this matter and constitutes "evident partiality" within the meaning of Section 10 of the Federal Arbitration Act, 9 U.S.C. A. § 10(a)(2) (Supp. 2006).

3. The Subject Motion is granted, and Humpherys is hereby disqualified from serving as an arbitrator in this matter.

4. On or before September 29, 2006, Barlow shall appoint a replacement arbitrator to serve as a member of the arbitration panel in this matter.

DATED this 5<sup>th</sup> day of September, 2006.

BY THE COURT:

  
\_\_\_\_\_  
SAMUEL ALBA  
UNITED STATES MAGISTRATE JUDGE

APPROVED AS TO FORM:

/s/ Jordan Kendell  
(Signed by filing attorney with counsel's permission)  
ROBERT G. GILCHRIST  
JORDAN KENDELL  
EISENBERG, GILCHRIST & MORTON  
Attorneys for Plaintiff

/s/ Mark O. Morris  
(Signed by filing attorney with counsel's permission)  
MARK O. MORRIS  
SNELL & WILMER L.L.P.  
Attorneys for Defendant HealthExtras, Inc.

/s/ Raymond J. Etcheverry  
RAYMOND J. ETCHEVERRY  
KENT O. ROCHE  
PARSONS BEHLE & LATIMER  
Attorneys for Defendants Federal Insurance Company  
and Sklover Group

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of September, 2006, I electronically filed the foregoing **ORDER** with the clerk of court using the CM/ECF system which sent notification of such filing to the following:

Robert G. Gilchrist  
Jeffrey D. Eisenberg  
Jordan Kendell  
EISENBERG, GILCHRIST & MORTON  
900 Parkside Office Tower  
215 So. State Street  
Salt Lake City, Utah 84111  
[rgilchrist@braytonlaw.com](mailto:rgilchrist@braytonlaw.com)  
[jeisenberg@braytonlaw.com](mailto:jeisenberg@braytonlaw.com)  
[jkendell@braytonlaw.com](mailto:jkendell@braytonlaw.com)

Mark O. Morris  
SNELL & WILMER, LLP  
15 West So. Temple, Suite 1200  
Gateway Tower West  
Salt Lake City, Utah 84101-1004  
[mmorris@swlaw.com](mailto:mmorris@swlaw.com)

/s/ Raymond J. Etcheverry

---

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

ELLEN VALEEN HORROCKS,

Plaintiff,

vs.

DAGGETT COUNTY, a political subdivision  
of the State of Utah

Defendant.

ORDER DENYING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

Case No. 2:05-CV-00238 PGC

Defendant Daggett County's motion for summary judgment is now before the court. Plaintiff Ellen Valeen Horrocks filed a complaint against the County alleging that it owed her overtime compensation and thereby violated the Fair Labor Standards Act (FLSA).<sup>1</sup> The County argues in its motion for summary judgment that Ms. Horrocks filed her suit after the applicable statute of limitations had run, and that Ms. Horrocks is an exempt employee not entitled to overtime benefits under the FLSA. Ms. Horrocks argues that the County's actions resulting in its failure to pay her were willful, and therefore the statute of limitations on her action has not run. She also argues that she was not an exempt employee according to the FLSA definition. For the

---

<sup>1</sup> 29 U.S.C. § 201 *et seq.*

reasons discussed below, the court finds that there continue to be disputed issues of material fact and DENIES the County's motion for summary judgment [#17].

### **BACKGROUND**

For the purpose of resolving this motion for summary judgment, the court finds the following facts. The County employed Ms. Horrocks from September of 1998 through February of 2003. She worked as the "jail commander" for the County jail during that time. Ms. Horrocks testified that she "wrote the [job descriptions] at the jail that were later incorporated down at the County" and testifies that she was responsible for writing up the job classifications and descriptions as part of her responsibilities as the jail commander.<sup>2</sup>

According to the Daggett County Handbook, the "jail commander is the senior command officer in the jail, and as such, serves as the Division Commander (or Department Head) for the Corrections Division of the Sheriff's Department."<sup>3</sup> The County Sheriff appoints the jail commander, who serves at the sheriff's pleasure and is directly responsible to the Chief Deputy and the Sheriff.<sup>4</sup> The jail commander has "administrative responsibility for supervision, maintenance, management and operations of the Jail Division."<sup>5</sup> The jail commander

directs, supervises, and commands all operations of the Corrections Division, and shall have responsibility for maintaining uniformity and consistency in jail operations, the

---

<sup>2</sup> Pl's Memo. in Opp. of Mot. for Summ. Judg., Docket No. 19, Ex.2, at 7-:18-71:16 (June 30, 2006) (Ellen Horrocks Deposition).

<sup>3</sup> Def's Memo. in Supp. of Sum. Judg., Docket No. 18, Ex.C, County Handbook at 358 (May 31, 2006).

<sup>4</sup> County Handbook at 14.

<sup>5</sup> *Id.*

maintenance of all jail equipment, the development, implementation, maintenance, review, and revision of the Jail Policy and Procedures Manual, as well as consistency in the application and enforcement of those policies and procedures.<sup>6</sup>

The jail commander also “assists senior administrators of the Sheriff’s Department for the planning and development of long and short range goals for the jail, and in the development and implementation of specific standards and operational objective for the overall management and operation of the facility.”<sup>7</sup> The jail commander is directly responsible to the Sheriff and “shall represent the Corrections Division and it[’s] needs to the Sheriff’s Department Administration, . . . Board of County Commissioners, . . . and other law enforcement agencies.”<sup>8</sup>

According to the County Handbook, the jail commander engages in a number of duties. She “maintain[s] daily, monthly and annual records and reports, . . . is responsible for all decisions affecting policy and procedures for jail operations, . . . and . . . conduct[s] periodic staff meetings and training classes . . . for all staff members.”<sup>9</sup> She also “shall evaluate problems, develop solutions, implement new policy, and revise existing policy as the need arises.”<sup>10</sup> The jail commander is responsible for training requirements, supervises the development of jail staff training, and is “responsible for the administrative supervision of the jail staff, to include shift assignments, training schedules, and maintaining the required State certification of all corrections

---

<sup>6</sup> *Id.* at 358.

<sup>7</sup> *Id.* at 358-59.

<sup>8</sup> *Id.* at 359.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*



officers.”<sup>11</sup> On a daily basis Ms. Horrocks also testified that she did “a little bit of everything” in the jail, including working with inmates, assisting the jailers, helping out in the kitchen and with meals, and doing paperwork.<sup>12</sup> Ms. Horrocks had supervisory authority over approximately twenty jail employees, though she states that she had no authority to terminate any of the employees.<sup>13</sup> She did, however, have the ability to “make recommendations” on firing, and did so at one time,<sup>14</sup> but the recommended person quit before they were terminated.<sup>15</sup>

The County Jail is a separate facility from the Sheriff’s Office, although Ms. Horrocks testifies that the Sheriff was present on a daily basis.<sup>16</sup> The Sheriff determined Ms. Horrocks’ shift and hours of work<sup>17</sup> and was aware of the hours that she worked.<sup>18</sup> In return for Ms. Horrocks’ work, the County paid her a salary which remained fixed regardless of the number of hours she worked.<sup>19</sup> Ms. Horrocks claims, however, that she was promised that she would be paid for any “compensatory time;” the hours she worked in addition to her scheduled shift. Ms.

---

<sup>11</sup> *Id.* at 359-60.

<sup>12</sup> Horrocks Deposition at 34:23-35:4; 79:10-80:25.

<sup>13</sup> *Id.* at 65:14-66:16.

<sup>14</sup> *Id.* at 68:17-69:13.

<sup>15</sup> *Id.* at 65:14-66:16.

<sup>16</sup> *Id.* at 59:6-60:16.

<sup>17</sup> *Id.* at 14:11-18.

<sup>18</sup> *Id.* at 59:6-23.

<sup>19</sup> *Id.* at 35:12-36:11.

Horrocks kept a monthly time sheet which summarized the number of hours she worked; recording the amount of compensatory time, vacation leave, and sick leave. Ms. Horrocks claims that during the course of her employment with the County she accumulated substantial compensatory time for which she was never paid.

On about February 28, 2003, Ms. Horrocks resigned from her position with the County. On March 28, 2005, Ms. Horrocks filed her complaint seeking payment for compensatory time accumulated. Ms. Horrocks claimed that the County had violated the overtime provisions of the FLSA and that its refusal to pay her for the compensatory time was willful and in disregard of the FLSA because the County had known she was not an exempt employee. In support of her complaint, Ms. Horrocks noted that the County previously paid compensatory time to at least two other employees who had left the County's employment. Ms. Horrocks claimed that these two employees had parallel positions and were similarly situated to herself, though she was not compensated for her compensatory time.

The County sought summary judgment on two grounds: first, that Ms. Horrocks had not shown it willfully violated FLSA and therefore she filed her suit outside of the applicable two year statute of limitations; and second, that her position as jail commander was exempt from the FLSA overtime provisions. Ms. Horrocks argued against both of those assertions in her opposition memorandum. The motion is now fully briefed.

### **STANDARD OF REVIEW**

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”<sup>20</sup> “The court must examine the record to determine whether any genuine issue of material fact is in dispute, and must construe the facts and reasonable inferences drawn therefrom in the light most favorable to the nonmoving party.”<sup>21</sup> The County has moved for summary judgment on Ms. Horrocks’ asserted claims, so all reasonable inferences will be made in the light most favorable to Ms. Horrocks.

## **DISCUSSION**

### *A. It Is Still Disputed Whether Ms. Horrocks Sufficiently Demonstrates a Willful Violation of FLSA.*

Although FLSA has a two-year statute of limitations, the statute of limitations for a willful violation is actually three years.<sup>22</sup> Ms. Horrocks left her employ on February 28, 2003, and filed her complaint on March 28, 2005. She filed her complaint outside of the two-year statute of limitations for a normal, non-willful violation of FLSA, but within the three year statute of limitations for willful violations of FLSA. The court must first determine whether Ms. Horrocks has satisfied her burden to demonstrate a willful violation of FLSA, in which case Ms. Horrocks’ complaint falls under the three-year statute of limitations. The court will then consider the merits of the County’s exemption arguments.

Ms. Horrocks bears the burden for proving that the actions taken by Daggett County were

---

<sup>20</sup> Fed. R. Civ. P. 56(c).

<sup>21</sup> *Holt v. Grand Lake Mental Health Ctr., Inc.*, 443 F.3d 762, 765 (10th Cir. 2006) (citing *Curtis v. Oklahoma City Pub. Sch. Bd. of Educ.*, 147 F.3d 1200, 1214 (10th Cir. 1998)).

<sup>22</sup> 29 U.S.C. § 255(a).

knowing or in reckless disregard of FLSA.<sup>23</sup> The determination of willfulness is a mixed question of law and fact.<sup>24</sup> “The standard for willful violations [of FLSA] is whether the employer ‘knew or showed reckless disregard for the matter of whether its conduct was prohibited by [FLSA].’”<sup>25</sup> Willfulness does not have to be established through litigation<sup>26</sup> or through prior violations.<sup>27</sup>

If an employer acts reasonably in determining its legal obligation under FLSA, its action cannot be deemed willful for the purposes of the three-year statute of limitations period.<sup>28</sup> According to the Fifth Circuit, good faith and reasonableness, including a putative employer’s consultation with an attorney, are defenses to allegations of willfulness.<sup>29</sup> Such good faith and reasonableness requires some investigation of potential liability under FLSA. But willfulness can also apply where the employer disregards the very “possibility” that it was violating FLSA.<sup>30</sup> Of course, the court is not to presume that conduct was willful in the absence of evidence,<sup>31</sup> as

---

<sup>23</sup> *Gilligan v. City of Emporia, Kansas*, 986 F.2d 410, 413 (10th Cir. 1993).

<sup>24</sup> *Reich v. Monfort, Inc.*, 144 F.3d 1329, 1334 (10th Cir. 1998)

<sup>25</sup> *Id.* (quoting *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988)).

<sup>26</sup> *Id.* at 1335.

<sup>27</sup> *Dole v. Elliot Travel and Tours, Inc.*, 942 F.2d 962, 967 (6th Cir. 1991).

<sup>28</sup> *McLaughlin*, 486 U.S. at 135 n. 13.

<sup>29</sup> *Halferty v. Pulse Drug Co.*, 826 F.2d 2, 3-4 (5th Cir. 1987).

<sup>30</sup> *Herman v. RSR Sec. Servs. Ltd.*, 172 F.3d 132, 141 (2d Cir. 1999).

<sup>31</sup> *Cox v. Brookshire Grocery Co.*, 919 F.2d 354, 356 (5th Cir. 1990).

the burden rests squarely on Ms. Horrocks to proffer such evidence.

Ms. Horrocks offers several justifications for her belief that the County willfully violated FLSA. First, Ms. Horrocks argues that the County paid overtime to two other similarly situated employees. Second, she argues that the County's Personnel Policies and Procedures manual "explicitly recognized that compensatory time could be accrued, up to 480 hours per year, as authorized by the wage and hour regulations."<sup>32</sup> Third, she argues that the County never informed her that it considered her to be exempt from the FLSA overtime provisions. And fourth, she argues that the former Sheriff, Gaylen Jarvie, promised her that she would be paid for accumulated compensatory time.

Ms. Horrocks provides affidavits and support for some of her arguments. Mark Watkins' affidavit states that at "the time I terminated my employment[,], I was paid my vacation and comp. time that I had accrued [during the work period]"<sup>33</sup> and "I received pay from Daggett County for all accumulated comp time I had."<sup>34</sup> And when his title changed from Sergeant to Chief Deputy, Mr. Watkins "was advised by Sheriff Jarvie that Chief Deputy Ray Ruble was going to get paid approx[imately] \$30,000 in comp time."<sup>35</sup>

Former Sheriff Gaylen Jarvie's deposition states that he explained to Ms. Horrocks "that she would not be paid overtime for excess hours worked over her forty hour work week [but] . . .

---

<sup>32</sup> Pl's Memo. in Opp. of Mot. for Summ. Judg., Docket No. 19, at 7 (June 30, 2006).

<sup>33</sup> *Id.* Ex. 3, Mark J. Watkins Affidavit, ¶ 3.

<sup>34</sup> *Id.* at ¶ 8.

<sup>35</sup> *Id.* at ¶ 5.

that in lieu of overtime pay she would receive compensation time for her excess hours.”<sup>36</sup> He also “made the representation that she would receive compensation time for excess hours worked based on the fact that the under-sheriff and patrol deputies employed by Daggett County worked under the same arrangement, because[] Daggett County did not pay overtime to the Sheriff’s Office employees.”<sup>37</sup>

Finally, Ms. Horrocks testifies in her deposition that “I was told that I would be paid for my overtime when I started.”<sup>38</sup> She testifies that Sheriff Jarvie told her that “I would be compensated for my overtime, but he explained to me that they didn’t pay you, that you got comp time, you acquired and used comp time. He explained to me [before I was hired] how that worked.”<sup>39</sup> According to Ms. Horrocks, Sheriff Jarvie indicated that “only the elected officials did not accumulate comp time” and “if you didn’t get to use all those comp time hours . . . you would be paid out if you terminated.”<sup>40</sup> And Sheriff Jarvie also told Ms. Horrocks that “you would acquire it at the time and a half rate just like if you were being paid . . . and then they would pay you your ending balance.”<sup>41</sup>

Relating to her allegations that Daggett County willfully or recklessly violated the

---

<sup>36</sup> *Id.* Ex. 1, Sheriff Gaylen Jarvie Affidavit, ¶ 5.

<sup>37</sup> *Id.* at ¶ 6.

<sup>38</sup> Horrocks Deposition at 50:1-2.

<sup>39</sup> *Id.* at 50:8-16.

<sup>40</sup> *Id.* at 51:13-23.

<sup>41</sup> *Id.* at 52:3-6.

FLSA, Ms. Horrocks bases her determination of willfulness on the fact that “they didn’t pay me – There was no reason for them not to.”<sup>42</sup> She also alleges that “I don’t think that they checked to make sure that they could legally or not legally pay me. . . . Because they didn’t pay me. . . . There was just no reason for them not to pay me. They knew that I was accumulating comp time, and why they didn’t pay me – It was just – They just didn’t do it. They felt they could get away with not paying me.”<sup>43</sup> She also states that Daggett County “never considered me exempt. They never classified me as exempt.”<sup>44</sup> Ms. Horrocks justification for this statement is that “Well, I would think they would have told me. . . . I was told that I would be paid for my overtime when I started. . . . If they changed that, they should have told me.”<sup>45</sup>

“While mere knowledge that the FLSA ‘was in the picture’ may not be enough to sustain a finding of wilfulness, . . . prior violations, especially when combined with the undisputed testimony of the former employees, prove, at the very least, reckless disregard” constituting a willful violation of the FLSA.<sup>46</sup> In this case, there are no prior violations of the FLSA noted on the record. Ms. Horrocks has provided, however, *undisputed* testimony regarding the statements made by her superiors and others in her office regarding whether they would be paid compensation time for overtime hours worked. The County does not dispute the record and

---

<sup>42</sup> *Id.* at 52:7-16.

<sup>43</sup> *Id.* at 52:18-53:1.

<sup>44</sup> *Id.* at 49:15-20.

<sup>45</sup> *Id.* at 49:21-50:5.

<sup>46</sup> *Chao v. A-One Med. Servs.*, 346 F.3d 908, 919 (9th Cir. 2003) (quoting *McLaughlin*, 486 U.S. at 132-35).

affidavits provided by Ms. Horrocks, but argues that she has not provided *enough* evidence that the County willfully violated the FLSA.

Sole reliance on Ms. Horrocks' own statements that Daggett County willfully or recklessly violated the FLSA certainly gives the court pause. She provides evidence that might show that Daggett County acted improperly, but her own statements fail to provide enough evidence requiring the court to deny summary judgment on this issue. There is undisputed evidence, however, that Daggett County agreed to pay two other employees their accrued overtime pay, as well as evidence that Ms. Horrocks' supervisor seemingly made a deal to pay her overtime. Sheriff Jarvie testifies that "[I]n order to allay Ms. Horrocks' fears and apprehension[,] I met with [her and] . . . explained . . . that the jail budget was tight and that she would not be paid overtime for excess hours worked over her forty hour work week. I also explained to her that in lieu of overtime pay[,] she would receive compensation time for her excess hours."<sup>47</sup> Sheriff Jarvie also "made the representation that she would receive compensation time for excess hours worked based on the fact that the under-sheriff and patrol deputies employed by Daggett County worked under the same arrangement, because, Daggett County did not pay overtime to the Sheriff's Office employees."<sup>48</sup> These statements indicate awareness of actual payment requirements, but does not concretely demonstrate that Daggett County knew it was violating the FLSA, or recklessly disregarded the possibility.

Daggett County has failed, however, to provide any rebuttal evidence demonstrating that

---

<sup>47</sup> Sheriff Jarvie Affidavit at ¶ 5.

<sup>48</sup> *Id.* at ¶ 6.



any of the statements made in the affidavits or Ms. Horrocks' deposition are false or misleading. Nor has it provided any evidence that it reasonably ascertained, either through a labor attorney, or a county attorney, or anyone with any experience examining the Department of Labor standards, that Ms. Horrocks' position was exempt from the FLSA. Such evidence could be easily provided either by an attorney's memo, or by affidavit, but the court has seen nothing yet as to this issue. Indeed, certain courts have held that reliance on advice from the employer's attorney can show a lack of willfulness,<sup>49</sup> but Daggett County has failed to allege such a fact and solely relies on the fact that Ms. Horrocks has the burden of proof. And both 29 C.F.R. § 578.3(c)(2) and § 578.3(c)(3) demonstrate that an employer is expected to receive advice from an attorney for the purposes of applying the FLSA. To wit, Daggett County "doth protest too much"<sup>50</sup> without providing anything resembling rebuttal evidence.

The court is left with certain evidence on one side, and no evidence on the other. While the burden is certainly on Ms. Horrocks to demonstrate a willful violation of the FLSA, she has clearly provided enough evidence that should bring this question to the jury. The court is wary of acting as a definite fact-finder on this issue, given that Ms. Horrocks' undisputed evidence certainly begs the question why she was not paid overtime compensation. Given the undisputed testimony that two other employees received their overtime compensation, that Ms. Horrocks was promised this compensation by her employer, and also that the County's wage regulations

---

<sup>49</sup> See, e.g., *Cox v. Brookshire Grocery Co.*, 919 F.2d 354, 356 (5th Cir. 1990). But see *Craven v. Minot*, 730 F. Supp. 1511, 1514 (D.N.D. 1989)

<sup>50</sup> WILLIAM SHAKESPEARE, *HAMLET* at 239.

handbook provided for 480 hours of compensation time, the court finds the Ms. Horrocks has met her burden to survive summary judgment on whether the County willfully violated the FLSA. There continue to be disputed issues of material fact on this issue which prevent the granting of summary judgment on this claim. Of course, whether or not the County *actually* engaged in a willful violation will be a question for the jury.

*B. The County Has Not Demonstrated Enough for Summary Judgment to Show that Ms. Horrocks' Employment Falls Under Either FLSA Exemption.*

The County also argues that Ms. Horrocks was not entitled to the FLSA overtime/compensation pay because she falls under both the executive exemption and the administrative exemption. Ms. Horrocks counters that she does not meet the requirements for either of these tests. Exemptions to the FLSA are to be narrowly construed; the employer must show that the employee fits “plainly and unmistakably within the exemption’s terms” – under both the “salary” test and the “duties” test.<sup>51</sup> And Daggett County must prove that the employee is exempt by “clear and affirmative” evidence.<sup>52</sup>

#### 1. The FLSA Executive Exemption.

The FLSA sets forth a “short test” and a “long test” for determining whether an employee qualifies for the “executive” exemption.<sup>53</sup> The short test applies to an employee that is paid more than \$250 dollars per week, and “whose primary duty consists of the management of the enterprise in which the employee is employed . . . and includes the customary and regular

---

<sup>51</sup> See *Reich v. State of Wyoming*, 993 F.2d 739, 741 (10th Cir. 1993).

<sup>52</sup> *Donovan v. United Video, Inc.*, 725 F.2d 577, 581 (10th Cir. 1984).

<sup>53</sup> 29 C.F.R. § 541.1.

direction of the work of two or more other employees therein.”<sup>54</sup> According to the Federal

Regulations, under the short test, the following activities are considered management duties:

Interviewing, selecting, and training employees; setting and adjusting their rates of pay and hours of work; directing their work; . . . appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status, handling their complaints and grievances and disciplining them when necessary; planning their work; determining the techniques to be used; apportioning the work among the workers; determining the type of . . . supplies . . . to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety of the men and the property.<sup>55</sup>

An employee who spends over 50 percent of their time in management would have management as their primary duty.<sup>56</sup> If it is determined that the employee spent less than 50% of their time on management duties, however, an employee might nevertheless have management as their primary duty if other pertinent factors apply.<sup>57</sup> These four factors include “the relative importance of managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, [their] relative freedom from supervision, and the relationship between [their] salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.”<sup>58</sup> As stated earlier, the burden is on the employer to show that the

---

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* § 541.102(b).

<sup>56</sup> *Id.* § 541.03

<sup>57</sup> *Id.*

<sup>58</sup> *Dept. of Labor v. City of Sapulpa*, 30 F.3d 1285, 1287 (10th Cir. 1994) (quoting 29 C.F.R. § 541.103).

employee falls “plainly and unmistakably within the exemption’s terms.”<sup>59</sup>

Ms. Horrocks concedes that she has met the first and third part of the executive exempt short test because she was paid a salary in excess of \$250 dollars per week and she regularly supervised more than two employees. The parties dispute whether Ms. Horrocks’ primary duty was management, however. In support of its argument, the County argues that the jail commander’s responsibilities, as defined in a section of the County Handbook written by Ms. Horrocks, included “supervision, maintenance, management and operations of the Jail.”<sup>60</sup> The County concludes that the County Handbook demonstrates that the jail commander’s primary duty is “management” of the jail. Ms. Horrocks concedes that the County Handbook did accurately portray some of the jail commander’s responsibilities and that she performed some supervisory tasks. Ms. Horrocks argues, however, that the County has not demonstrated she spent a predominant amount of her time on tasks that would make her subject to the executive exemption of the FLSA.

Although the County has shown that Ms. Horrocks had a number of managerial responsibilities, it has not conclusively demonstrated that her primary duty was management, therefore making her exempt as an executive employee. First, the County has provided no evidence that Ms. Horrocks was engaged in managerial or supervisory functions more than 50% of the time. Second, the County has not shown that the four other pertinent factors support a

---

<sup>59</sup> *Reich v. State of Wyoming*, 993 F.2d 739, 741 (10th Cir. 1993).

<sup>60</sup> Def’s Reply Memo. in Support of Mot. for Summ. Judg., Docket No. 21, at 5 (July 20, 2006).

conclusion that Ms. Horrocks' primary duty was managerial. The County has not "plainly or unmistakably" shown that Ms. Horrocks' managerial duties were more important than her other duties, that she frequently exercised any discretionary powers, that she had considerable freedom from supervision, or that she had a salary that substantially differed from non-exempt employees. The County has failed to provide undisputed material facts demonstrating that Ms. Horrocks' exemption from the overtime provisions of the FLSA on account of being an executive employee. Summary judgment on this issue is inappropriate at this juncture.

## 2. The FLSA Administrative Exemption

There is also a "short test" and a "long test" for determining whether an employee falls within the "administrative" exemption of the FLSA.<sup>61</sup> The short test applies when an employee is compensated a salary in excess of \$250 per week and whose primary duty consists of:

(1) nonmanual work directly related to management policies or general business operations, and  
(2) includes work requiring the exercise of discretion and independent judgment.<sup>62</sup> The Federal Regulations state that performing some manual work does not remove an otherwise exempt employee from "white-collar" status if it such work directly and closely relates to her work requiring the exercise of discretion and independent judgment.<sup>63</sup> Further, work that is directly related to management policies or general business operations describes those types of activities

---

<sup>61</sup> 29 C.F.R. § 541.2

<sup>62</sup> 29 C.F.R. § 541.2(e)(2).

<sup>63</sup> 29 C.F.R. § 541.203(a).

relating to administrative operations as distinguished from production.<sup>64</sup> “The administrative operations of the business include. . . . advising the management, planning, negotiating, representing the company, purchasing, promoting sales, and business research control.”<sup>65</sup>

Finally, the Federal Regulations provide the following description of discretion and independent judgment:

In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term . . . implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.<sup>66</sup>

Ms. Horrocks concedes that she was a salaried employee making in excess of \$250 per week. The parties dispute whether Ms. Horrocks’ primary duties consisted of nonmanual work directly related to management policies or general business operations, and whether this work required Ms. Horrocks to exercise discretion and independent judgment. The County again relies on the County Handbook to argue that Ms. Horrocks was directly responsible for jail operations, including maintaining personnel files, developing a budget and ensuring proper maintenance of the jail. The County argues that these responsibilities provide ample evidence that Ms. Horrocks’ work comprised of management, planning, and representing the “company,” among other activities, thereby fulfilling the requirements for administrative operations. Further, the County argues that

---

<sup>64</sup>29 C.F.R. § 541.205(a).

<sup>65</sup>29 C.F.R. § 541.205(b).

<sup>66</sup>29 C.F.R. § 541.207(a).

while Ms. Horrocks performed some manual labor tasks, these tasks were not her primary responsibility and that this work was “directly and closely related” to management policies and general business operations, thereby making her work exempt from the FLSA. Finally, the County argues that Ms. Horrocks performed independent assignments, was directly responsible for the formulation and implementation of jail policies, and was free from the supervision of the sheriff while administering the day to day operations of the jail. It argues that Ms. Horrocks regularly exercised discretion and independent judgment, and as a result, she meets the requirements for the administrative exemption short-test of the FLSA.

Conversely, Ms. Horrocks argues that she has not fulfilled the short-test requirements for an administrative exempt employee. Ms. Horrocks first argues that she performed many manual labor tasks and the record does not demonstrate what portion of her time was devoted to these tasks. Ms. Horrocks argues that a material question of fact exists as to whether her primary duties were non-manual and directly related to management policies or general business operations. Ms. Horrocks next argues that the County erred by relying on the County Handbook to provide evidence of her use of independent judgment and discretion. She argues that the County lacks evidence demonstrating that the independent and discretionary responsibilities listed in the County Handbook comprised the actual work that she did. Finally, Ms. Horrocks states that her former supervisor, Sheriff Jarvie, testified that she exercised little discretion.

At this juncture, the County has not “plainly and unmistakably” demonstrated that

Ms. Horrocks' primary duties were non-manual, that these duties directly related to management policies or general business operation, and that these duties required Ms. Horrocks to use discretion and independent judgment. The court cannot find that Ms. Horrocks falls into the administrative exemption of the FLSA as a matter of law. Although the County has shown that Ms. Horrocks performed a variety of administrative tasks, the record does not conclusively show that the manual tasks performed by Ms. Horrocks were not her primary duty, nor does it display that this work was directly and closely related to work requiring the exercise of discretion and independent judgment. Additionally, the County has not plainly and unmistakably demonstrated that the work which Ms. Horrocks actually performed required the use of discretion and independent judgment. Summary judgment on this issue is inappropriate at this point.

### **CONCLUSION**

Given the discussion above, the court finds that Ms. Horrocks has provided enough material evidence disputing whether Daggett County willfully violated the FLSA. Additionally, Daggett County has not met its burden on summary judgment to conclusively demonstrate as a matter of law that Ms. Horrocks' position fell either under the "executive" exemption or the "administrative" exemption of the FLSA.

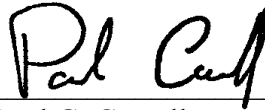


The court therefore DENIES Daggett County's summary judgment motion [#17].

SO ORDERED.

DATED this 11th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

2006 SEP 11 P 3:27

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

AMERICAN CASUALTY COMPANY OF  
READING, PENNSYLVANIA,

Plaintiff,

vs.

KERBS CONSTRUCTION  
CORPORATION, a Utah corporation, et al.,

Defendant.

TRIAL ORDER

Case No. 2:05 CV 356 TC

The final pretrial conference in this matter is scheduled for October 3, 2006, at 3:00 p.m.

This case is set for a four-day jury trial beginning October 24, 2006, at 8:30 a.m. The attorneys are expected to appear in chambers at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.

Counsel are instructed as follows:

**1. Court-Imposed Deadlines.**

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

**2. Pretrial Order.**

At the pretrial conference, plaintiff is to file a joint proposed pretrial order which has been approved by all counsel. The pretrial order should conform generally to the requirements of DuCivR 16-1(3) and to the approved form of pretrial order which is reproduced as Appendix IV to the Rules of Practice for the U.S. District Court for the District of Utah.

### 3. Jury Instructions

The court has adopted its own standard general jury instructions, copies of which may be obtained from the court prior to trial. The procedure for submitting proposed jury instructions is as follows:

(a) The parties must serve their proposed jury instructions on each other **at least ten business days before trial**. The parties should then confer in order to agree on a single set of instructions to the extent possible.

(b) If the parties cannot agree upon one complete set of final instructions, they may submit separately those instructions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions for the case.

© The joint proposed instructions (along with the proposed instructions upon which the parties have been unable to agree) must be filed with the court **at least five business days before trial**. All proposed jury instructions must be in the following format:

(I) An original and one copy of each instruction, labeled and numbered at the top center of the page to identify the party submitting the instruction (e.g., "Joint Instruction No. 1" or "Plaintiff's Instruction No. 1"), and including citation to the authority that forms the basis for it.

(ii) A 3.5" high density computer diskette containing the proposed instructions (and any proposed special verdict form), without citation to authority, formatted for the most current version of WordPerfect. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(d) Each party should file its objections, if any, to jury instructions proposed by any other party **no later than two business days before trial**. Any such objections must recite the proposed instruction in its entirety and specifically highlight the objectionable language contained therein. The objection should contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit, in conformity with paragraph 3(c)(I) - (ii) above, an alternative instruction covering the pertinent subject matter or principle of law. Any party

may, if it chooses, submit a brief written reply in support of its proposed instructions **on the day of trial**.

(e) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper and will not be given.

(f) Modified versions of statutory or other form jury instructions (e.g., Devitt & Blackmar) are acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

#### **4. Special Verdict Form**

The procedure outlined for proposed jury instructions will also apply to special verdict forms.

#### **5. Requests for Voir Dire Examination of the Venire.**

The parties may request that, in addition to its usual questions, the court ask additional specific questions to the jury panel. Any such request should be submitted in writing to the court and served upon opposing counsel **at least ten business days before trial**.

#### **6. Findings of Fact and Conclusions of Law**

At the conclusion of all non-jury trials, counsel for each party will be instructed to file with the court proposed findings of fact and conclusions of law. The date of submission will vary, depending upon the need for and availability of a transcript of trial and the schedule of court and counsel. Findings of fact should be supported, if possible, by reference to the record. For that reason, the parties are urged to make arrangements with Mr. Raymond Fenlon, the Court Reporter, for the preparation of a trial transcript. Conclusions of law must be accompanied by citations to supporting legal authority.

As with proposed jury instructions and special verdict forms, the proposed findings of fact and conclusions of law should be submitted to chambers both in hard copy and electronic format using WordPerfect .

#### **7. Motions in Limine**

All motions in limine are to be filed with the court **at least five business days before trial**, unless otherwise ordered by the court.

## **8. Exhibit Lists/Marking Exhibits**

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Mary Jane McNamee, at 524-6116. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

## **9. In Case of Settlement**

Pursuant to DUCivR 41-1, the court will tax all jury costs incurred as a result of the parties' failure to give the court adequate notice of settlement. Leaving a message on an answering machine or sending a notice by fax is not considered sufficient notice to the court. If the case is settled, counsel must advise the jury administrator or a member of the court's staff by means of a personal visit or by person-to-person telephonic communication.

## **10. Courtroom Conduct**

In addition to the rules outlined in DUCivR 43-1, the court has established the following ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:45 a.m. until 1:45 p.m., with two short (fifteen minute) breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.

(b) Stand as court is opened, recessed or adjourned.

© Stand when the jury enters or retires from the courtroom.

(d) Stand when addressing, or being addressed by, the court.

(e) In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the court. For example, the following objections would be proper: "Objection . . . hearsay." or "Objection . . . foundation." The following objection would be improper unless the court had requested further argument: "Objection, there has been no foundation laid for the expert's opinion

and this testimony is inherently unreliable.”

(f) Sidebar conferences will not be allowed except in **extraordinary** circumstances. If a sidebar conference is held, the court will, if possible, inform the jury of the substance of the sidebar argument. Most matters requiring argument should be raised during recess.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Do not greet or introduce yourself to witnesses. For example, “Good Morning, Mr. Witness. I represent the plaintiff in this case” is improper. Begin your examination without preliminaries.

(i) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(j) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and NOT by their first or given names.

(k) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(l) Offers of, or requests for, a stipulation shall be made out of the hearing of the jury.

(m) In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue. The following examples would be improper: “I believe the witness was telling the truth” or “I found the testimony credible.”

(n) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session.

DATED this 11th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive style with a large, stylized 'T' and 'C'.

TENA CAMPBELL  
United States District Judge

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**JASBIR B. SINGH,**

**Plaintiff,**

**v.**

**MODUS MEDIA LINK,**

**Defendant.**

**ORDER TO SHOW CAUSE**

**Case No. 2:05cv953**

**Judge Tena Campbell**

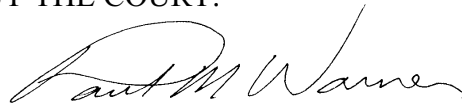
**Magistrate Paul M. Warner**

---

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Tena Campbell pursuant to 28 U.S.C. § 636(b)(1)(B). Plaintiff Jasbir B. Singh ("Plaintiff") is hereby ordered to show cause why this case should not be dismissed with prejudice as service of process has not been completed within 120 days, pursuant to rule 4(m) of the Federal Rules of Civil Procedure. The complaint was filed on November 17, 2005 and has been pending for 298 days with no activity. Accordingly, Plaintiff is directed to respond in writing within 15 days from the date of this order and inform the court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

DATED this 11th day of September, 2006.

BY THE COURT:



---

PAUL M. WARNER  
United States Magistrate Judge



STERLING A. BRENNAN, Utah State Bar No. 10060  
TIGE KELLER, Utah State Bar No. 9110  
WORKMAN NYDEGGER, P.C.  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 533-9800  
Facsimile: (801) 328-1707

FILED  
U.S. DISTRICT COURT  
2006 SEP 11 P 3:27  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

ROBERT A. JOHNSON, California State Bar No. 155938\*  
ROBERT JOHNSON LAW CORPORATION  
1201 Puerta Del Sol, Suite 205  
San Clemente, CA 92673  
Telephone: (949) 276-4216  
Facsimile: (949) 534-9999  
\* *Admitted Pro Haec Vice*

Attorneys for Defendants and Counter-Claimants DENNIS KLINE,  
SOURCE ONE MEDICAL, INC., RICK J. BALLARD, and DEREK  
D. DOMAN and Defendants JASON R. EWERS and JAMIL L. HARRIS

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

ORBIT MEDICAL, INC. and ROBERT N.  
GALLUP,

Plaintiffs,

v.

DENNIS KLINE, SOURCE ONE  
MEDICAL, INC., RICK J. BALLARD,  
JASON R. EWERS, JAMIL L. HARRIS, and  
DEREK D. DOMAN,

Defendants.

AND RELATED COUNTER-CLAIMS.

Civil Case No. 2:05cv1028 TC  
Judge Tena Campbell

~~[PROPOSED]~~ ORDER GRANTING COUNTER-  
CLAIMANT DENNIS KLINE'S MOTION FOR  
LEAVE TO FILE OVERLENGTH  
MEMORANDUM AND POINTS AND  
AUTHORITIES IN SUPPORT OF HIS MOTION  
FOR PRELIMINARY INJUNCTION

Upon consideration of Counter Claimant DENNIS KLINE's Motion for Leave to File an Overlength Memorandum of Points and Authorities in Support of his Motion for preliminary injunction:

IT IS HEREBY ADJUDGED THAT Defendant's Motion for Leave to File an Overlength Memorandum is **GRANTED**.

Dated this 11<sup>th</sup> day of September, 2006.

*Jena Campbell*

By \_\_\_\_\_  
United States District Court Judge

FILED  
U.S. DISTRICT COURT

2006 SEP 11 P 12:33

DISTRICT OF UTAH

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

DEPUTY CLERK

---

Larene Felt Hawkins, et al.

Plaintiffs

v.

Janssen Pharmaceutica Products, LP, et al.

Defendants

:  
:  
:  
: ORDER FOR PRO HAC VICE ADMISSION  
:  
:  
:

: Case Number 2:05-cv-1078 DAK

---

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of D.U. Civ R 83-1.1(d), the motion for the admission pro hac vice of Michaels C. Zellers in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 11<sup>th</sup> day of September, 2006.

  
U.S. District Judge

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

FILED  
U.S. DISTRICT COURT  
2006 SEP 11 A 10:23

UNITED STATES OF AMERICA,	:	2:06CR-00099TC	DISTRICT OF UTAH
	:		BY: _____
Plaintiff,	:		DEPUTY CLERK
vs.	:	ORDER FOR PSYCHIATRIC	
	:	EXAMINATION AND REPORT	
JOHN RAYMOND EDWARDS,	:	AS TO COMPETENCY AND	
	:	INSANITY	
Defendant.	:		

---

This case came before the Court on September 6, 2006, at 1:00 p.m. for status conference; defendant appeared in person and was represented by Viviana Ramirez, Assistant Federal Defender, and Richard G. MacDougall, First Assistant Federal Defender; plaintiff was represented by Eric Benson, Assistant United States Attorney; based on defendant's motion and good cause appearing,

IT IS HEREBY ORDERED:

1. Pursuant to 18 U.S.C. §§ 4241-4242, the Court finds there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to understand the nature and consequences of the proceedings against him or to assist properly in his defense, or that an issue may exist as to the insanity of the defendant at the time of the offense indicted in this case. Pursuant to the provisions of 18 U.S.C. §§ 4241-4242 and 4247(b) and (c), prior to further proceedings in this case, the Court orders that a psychiatric examination of defendant be conducted on the issues of the defendant's competency

and insanity and that a written report be prepared of such examination which is to be filed with the Court.

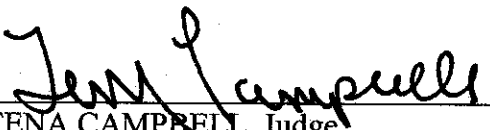
2. The Court directs that the competency portion of the evaluation focus particularly on the issue of the ability of defendant to assist properly in his defense.

3. Defendant John Raymond Edwards is hereby committed to the custody of the Attorney General of the United States for the purpose of conducting the psychiatric examination. The United States Marshal is directed to transport defendant, without unnecessary delay, to the Medical Center for Federal Prisoners at Springfield, Missouri, and, unless otherwise ordered, to return defendant to the District of Utah upon completion of the psychiatric examination.


4. Pursuant to 18 U.S.C. § 3161(h)(1)(A), the time between the date of this order and the date of further proceedings in this case is hereby excluded from speedy trial computation.

DATED this 11 day of September, 2006.

BY THE COURT:

  
TENA CAMPBELL, Judge  
United States District Court

Approved as to form:

  
ERIC G. BENSON  
Assistant United States Attorney

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMMY BRETT OLSEN,

Defendant.

: 2:06 CR 312 JTG  
:  
: ORDER CONTINUING  
: SENTENCING DATE  
:  
:  
:

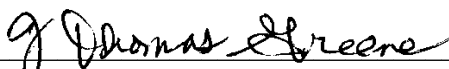
---

BASED UPON the Motion of the United States filed herein, stipulation of the parties and for good cause appearing,

IT IS HEREBY ORDERED that the sentencing in this case, currently scheduled for a September 29, 2006, is continued until the 21st day of November, 2006, at 10:00 AM, the continuance having been requested by the government, and because the parties have stipulated to the continuance for the reasons that new information has been provided to the United States Probation Office and defense counsel, requiring changes be made in the Pre-sentence Report, and defense counsel has filed several motions of which the government requires additional time to respond.

The court finds that such a continuance is in the best interest of the public and the defendant.

Dated this \_\_\_\_\_ day of September 2006.

  
J. Thomas Greene  
United States District Court Judge

STEVEN B. KILLPACK, Federal Defender (#1808)

L. CLARK DONALDSON, Assistant Federal Defender (#4822)

**UTAH FEDERAL DEFENDER OFFICE**

Attorney for Defendant

46 West Broadway, Suite 110

Salt Lake City, Utah 84101

Telephone: (801) 524-4010

Facsimile: (801) 524-4060

FILED  
U.S. DISTRICT COURT  
RECEIVED CLERK  
SEP 05 2006  
2006 SEP -7 P 2:13  
U.S. DISTRICT COURT  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BARRY LEE BREWER,

Defendant.

**ORDER FOR SUBMISSION OF  
REPLACEMENT EXHIBIT**

Case No. 2:06-CR-408 TS

Based upon motion of Mr. Brewer, and good cause appearing therefore;

IT IS HEREBY ORDERED that the colored printout of the digital photograph attached to defendant's motion is to be substituted for current Defense Exhibit A which is a black and white printout of the same photograph.

DATED this 7<sup>th</sup> day of September, 2006.

  
\_\_\_\_\_  
HONORABLE TED STEWART  
United States District Court Judge

RONALD FUJINO # 5387  
Attorney for Defendant  
356 East 900 South  
Salt Lake City, Utah 84111  
Telephone: (801) 268-6735  
Fax: (801) 579-0606  
counsel356@msn.com

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
vs.  
  
ISAAC MORALES-YSIDRO,  
  
Defendant.

2:06-CR-00426 PGC

**ORDER CONSOLIDATING TRIAL  
SETTINGS**

Judge Paul G. Cassell

---

Based upon Motion of the Defendant, Stipulation by the Government, and Good Cause appearing, the Court hereby ORDERS that the proceedings for Mr. Morales-Ysidro, be consolidated with the proceedings for Mr. Jose Robles. The trial setting for Mr. Morales-Ysidro now will be rescheduled to the same trial setting as Mr. Robles: October 23, 2006.

The Court additionally finds that the best interest of the public and the defendant dictate the continuance for Mr. Morales-Ysidro, and therefore this time shall be excluded from the time allowed for his trial under the Speedy Trial Act, 18 U.S.C. § 3161.

ORDERED BY THE COURT

Dated this 11th day of September, 2006.

  
\_\_\_\_\_  
U.S. DISTRICT COURT JUDGE  
THE HONORABLE PAUL G. CASSELL



# United States District Court

FILED IN UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF UTAH, DISTRICT OF UTAH

AUG 30 2006

UNITED STATES OF AMERICA  
V.

**ORDER SETTING  
CONDITIONS OF RELEASE**  
MARKUS D. ZIMMER, CLERK  
DEPUTY CLERK

ALAA "ALEX" RAMADAN

Case Number: 2:06-CR-495 DAK

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

United States District Court

PLACE

350 South Main

on

As directed

DATE AND TIME

## Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- ( ) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$ )

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

### Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- ( ) (6) The defendant is placed in the custody of:  
(Name of person or organization)  
(Address)  
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: \_\_\_\_\_  
Custodian or Proxy

- (✓)7) The defendant shall:
- ( ) (a) maintain or actively seek employment.
  - ( ) (b) maintain or commence an educational program.
  - (✓)(c) abide by the following restrictions on his personal associations, place of abode, or travel:  
**Travel is restricted to the District of Utah for court purposes only. Defendant is not to leave the District of California.**
  - (✓)(d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:  
**No contact with co-defendants. Case is not to be discussed between the defendants**
  - ( ) (e) report on a regular basis to the supervising officer as directed.
  - ( ) (f) comply with the following curfew:
  - ( ) (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
  - ( ) (h) refrain from excessive use of alcohol.
  - ( ) (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
  - ( ) (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
  - ( ) (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
  - ( ) (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
  - (✓)(m) execute a cash bond with in the amount of \$100,000.00
  - ( ) (n) return to custody each (week)day as of \_\_\_\_\_ o'clock after being released each (week)day as of \_\_\_\_\_ o'clock for employment, schooling or the following limited purpose(s):
  - ( ) (o) surrender any passport to
  - ( ) (p) obtain no passport
  - ( ) (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
  - ( ) (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
  - ( ) (s) submit to an electronic monitoring program as directed by the supervising officer.
  - (✓)(t) **all conditions of release imposed in other cases remain in effect.**

**Advice of Penalties and Sanctions**

TO THE DEFENDANT:

**YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:**

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

Alan Ramadan

Signature of Defendant

2505 Choked Trail Road

Address

Chula Vista, Ca 91914

City and State

Telephone

**Directions to the United States Marshal**

- (X) The defendant is ORDERED released after processing.  
( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 8/30/86

Samuel Alba

Signature of Judicial Officer

Chief Magistrate Judge Samuel Alba

Name and Title of Judicial Officer

FILED  
U.S. DISTRICT COURT

2006 SEP 11 A 9:54

IN THE UNITED STATES DISTRICT COURT OF UTAH

DISTRICT OF UTAH, CENTRAL DIVISION BY                      CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

SANTIAGO ACOSTA-TORRES,

Defendant.

**ORDER TO CONTINUE  
JURY TRIAL**

Case No. 2:06-CR-559 TS

Based on the motion to continue trial filed by Defendant in the above-entitled case and good cause appearing,

It is hereby ORDERED that the trial previously scheduled to begin October 2, 2006, is hereby continued to the 27th day of November, 2006, at 8:30 a.m. Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date set forth in paragraph one above is excluded from speedy trial computation.

DATED this 7th day of September, 2006.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Court Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

FILED  
U.S. DISTRICT COURT  
2006 SEP 11 A 10:24

**K-TEC, Inc.**, a Utah corporation,

Plaintiff,

vs.

**Vita-Mix Corp.**, an Ohio corporation,

Defendant.

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

**ORDER**

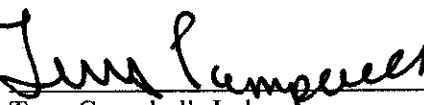
Civil Action No. 2:06-CV-00108.

Having reviewed the parties' Stipulated Motion to Amend Patent Deadlines, and finding good cause in support thereof, the Court hereby GRANTS the Motion. The deadlines imposed by the Patent Local Rules governing this case shall be as follows:

Patent Local Rule 3-1	Plaintiff's Preliminary Infringement Contentions	September 29, 2006
Patent Local Rule 3-3	Defendant's Preliminary Invalidity Contentions	November 13, 2006
Patent Local Rule 4-1	Parties Exchange Proposed Terms and Claim Elements for Construction	November 27, 2006
Patent Local Rule 4-2	Parties Exchange Preliminary Claim Construction and Extrinsic Evidence	December 18, 2006
Patent Local Rule 4-3	Parties File Joint Claim Construction and Prehearing Statement	January 12, 2007
Patent Local Rule 4-4(a)	Plaintiff's Opening Claim Construction Brief	February 26, 2007
Patent Local Rule 4-4(b)	Defendant's Responsive Claim Construction Brief	March 12, 2007
Patent Local Rule 4-4(c)	Plaintiff's Reply Claim Construction Brief	March 21, 2007

All other deadlines remain unchanged by this Order. IT IS SO ORDERED.

Dated this 11 day of September, 2006.

  
Tena Campbell, Judge  
United States District Court

FILED  
U.S. DISTRICT COURT

2006 SEP -7 P 2:13

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

SURE-LOC HARDWARE, INC., a Utah  
Corporation,

Plaintiff,

vs.

PREFERRED HARDWARE SOLUTIONS,  
INC., an Illinois Corporation, and JAMES E.  
HULICK, an individual resident of Illinois,

Defendants.

ORDER DISMISSING CASE WITH  
PREJUDICE

Case No. 2:06-CV-179 TS

Having been apprised of the facts and for good cause shown, and in accordance with  
DUCivR 54-1(d), this Court acknowledges Plaintiff's Notice of Dismissal. It is therefore

ORDERED THAT

The above-captioned case is dismissed with prejudice.

DATED September <sup>7<sup>th</sup></sup> 2006.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

FILED  
U.S. DISTRICT COURT  
SEP 08 2006  
2006 SEP 11 A 10: 24  
OFFICE OF  
JUDGE TENA CAMPBELL  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

BRETT L. TOLMAN, United States Attorney (#8821)  
AMY J. OLIVER, Assistant United States Attorney (#8785)  
Attorneys for the United States of America  
185 South State Street, #400  
Salt Lake City, Utah 84111  
Telephone (801) 524-5682  
amy.oliver@usdoj.gov

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, NORTHERN DIVISION

CAROL L. ROSE,	:	Court No. 2:06CV 00190 TC
Plaintiff,	:	
vs.	:	
	:	ORDER
JO ANNE B. BARNHART,	:	Honorable Tena Campbell
Commissioner Of Social Security,	:	
Defendant.	:	

The Court establishes the following Scheduling Order:

1. Plaintiff's brief is on file with the Court.
2. Defendant's answer brief should be filed on or before October 6, 2006.
3. Plaintiff may file a reply brief on or before October 20, 2006.

DATED this 11 day of September, 2006.

  
United States District Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

SEP 11 2006

MARKUS B. ZIMMER, CLERK  
BY  
DEPUTY CLERK

DAVID MULLINS and VANESSA MULLINS,  
Individually and on behalf of BRIDGETT  
MULLINS, a Minor Child,

Plaintiffs,

v.

McNEIL CONSUMER & SPECIALTY  
PHARMACEUTICALS, a Division of  
McNEIL-PPC, INC. and JOHNSON &  
JOHNSON,

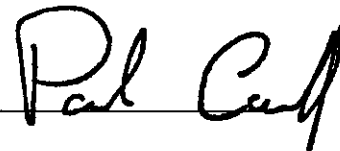
Defendants.

ORDER FOR PRO HAC VICE ADMISSION

Civil No. 2:06cv266 PGC

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission *pro hac vice* of Thomas W. Pulliam, Jr., Vernon I. Zvoleff, and Kenneth P. Conour in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 11<sup>th</sup> day of Sept, 2006. U.S. District Judge





IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

U.S. DISTRICT COURT

2006 SEP -6 P 2:10

EDWARD ONISKOR,	)	
	)	
Petitioner,	)	Case No. 2:06-CV-307 TS
	)	
v.	)	District Judge Ted Stewart
	)	
CLINT FRIEL et al.,	)	<b>ORDER</b>
	)	
Respondents.	)	Magistrate Judge Paul Warner

Petitioner, Edward Oniskor, has filed a habeas corpus petition. See 28 U.S.C.S. § 2254 (2006). This is Petitioner's third habeas petition before this Court. The first was denied because Petitioner failed to file it within the applicable period of limitation. *Oniskor v. Galetka*, No. 2:98-CV-170 DKW (D. Utah Feb. 18, 2000). The second was dismissed because Petitioner failed to pay his filing fee. *Oniskor v. Friel*, No. 2:02-MC-256 (D. Utah June 20, 2002). This third petition is "second or successive." See 28 U.S.C.S. § 2244(b) (2006).

Second or successive habeas petitions cannot be filed in district court until the petitioner "move[s] in the appropriate court of appeals for an order authorizing the district court to consider the application." *Id.* § 2244(b)(3)(A). However, Petitioner appears to have filed the current petition here without first asking permission from the Tenth Circuit. When a second or successive § 2254 petition is filed in a district court without the necessary appellate court sanction, it must be

transferred to the proper court. 28 U.S.C.A. § 1631 (2006);  
*Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997).

IT IS THEREFORE ORDERED that this second or successive  
petition be transferred to the United States Court of Appeals for  
the Tenth Circuit.

DATED this 6<sup>th</sup> day of ~~August~~ <sup>September</sup>, 2006.

BY THE COURT:

  
TED STEWART  
United States District Judge

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**BRYAN L. TRAVIS,**

**Plaintiff,**

**v.**

**PARK CITY MUNICIPAL  
CORPORATION,**

**Defendant.**

**ORDER TO SHOW CAUSE**

**Case No. 2:06cv308**

**Judge Paul G. Cassell**

**Magistrate Paul M. Warner**


---

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Paul G. Cassell pursuant to 28 U.S.C. § 636(b)(1)(B). Plaintiff Bryan L. Travis ("Plaintiff") is hereby ordered to show cause why this case should not be dismissed with prejudice as service of process has not been completed within 120 days, pursuant to rule 4(m) of the Federal Rules of Civil Procedure. The complaint was filed on April 12, 2006. Thus, the case has been pending for 152 days. On May 16, 2006, a summons was returned to the court unexecuted. The summons was not properly issued by the court under rule 4(b) and therefore does not constitute proper service.

Plaintiff is directed to respond in writing within 15 days from the date of this order and inform the court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

DATED this 11th day of September, 2006.

BY THE COURT:



---

PAUL M. WARNER

United States Magistrate Judge

BRETT L. TOLMAN, United States Attorney (#8821)  
CARLIE CHRISTENSEN, Assistant United States Attorney (#0633)  
185 South State Street, #400  
Salt Lake City, Utah 84111-1538  
Telephone: (801) 524-5682  
Facsimile: (801) 524-6924

FILED  
U.S. DISTRICT COURT  
2006 SEP 11 A 9:54

CLERK OF UTAH

CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

HASSOUN JABAR AL-GHANEM : 2:06 CV 00320 TS

Plaintiff, :

vs. :

ALBERTO R. GONZALES, Attorney :  
General, MICHAEL CHERTOFF, :  
Secretary of Department of Homeland :  
Security, ALFONSO AGUILAR, Chief of :  
Office of Citizenship, and ROBERT S. :  
MUELLER, III, Director of Federal :  
Bureau of Investigations, :

Defendants. : Hon. Ted Stewart

**ORDER GRANTING FEDERAL  
DEFENDANTS' MOTION FOR  
ENLARGEMENT OF TIME TO  
FILE AMENDED  
MEMORANDUM IN  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR ATTORNEYS  
FEES**

Based upon the foregoing motion and good cause appearing therefor, IT IS HEREBY ORDERED that Defendants are granted a 21-day enlargement of time, up to and including September 11, 2006 to file an amended memorandum in opposition to Plaintiff's motion for attorneys fees in accordance with DUCivR 7(b)(3).

DATED this 8<sup>th</sup> day of September, 2006.

BY THE COURT:

  
HON. TED STEWART  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
Central Division for the District of Utah

---

TRUE NORTH ACADEMY, LLC,  
and STOCKINVESTOR.COM, LLC,,

**Plaintiffs,**

**vs.**

ONLINE INVESTORS  
ADVANTAGE INCORPORATED,  
and INVESTTOOLS INC.,,

**Defendants.**

---

**SCHEDULING ORDER AND  
ORDER VACATING HEARING**

**Case No. 2:06 CV 398 DAK**

**District Judge Dale A. Kimball**

**Magistrate Judge**

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for September 13, 2006, at 1:30 pm is VACATED.

**\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\***

- | <b>1.</b> | <b>PRELIMINARY MATTERS</b>                                | <b><u>DATE</u></b> |
|-----------|---|--------------------|
|           | <b>Nature of claim(s) and any affirmative defenses:</b>   |                    |
| a.        | <b>Was Rule 26(f)(1) Conference held?</b>                 | <u>7/27/06</u>     |
| b.        | <b>Has Attorney Planning Meeting Form been submitted?</b> | <u>Yes</u>         |
| c.        | <b>Was 26(a)(1) initial disclosure completed?</b>         | <u>9/29/06</u>     |
- 
- | <b>2.</b> | <b>DISCOVERY LIMITATIONS</b>  | <b><u>NUMBER</u></b> |
|-----------|---|----------------------|
| a.        | <b>Maximum Number of Depositions by Plaintiff(s)</b>  | <u>10</u>            |
| b.        | <b>Maximum Number of Depositions by Defendant(s)</b>  | <u>10</u>            |
| c.        | <b>Maximum Number of Hours for Each Deposition</b><br>(unless extended by agreement of parties) | <u>7</u>             |

- d. Maximum Interrogatories by any Party to any Party 25
- e. Maximum requests for admissions by any Party to any Party no limit
- f. Maximum requests for production by any Party to any Party no limit

**DATE**

**3. AMENDMENT OF PLEADINGS/ADDING PARTIES<sup>2</sup>**

- a. Last Day to File Motion to Amend Pleadings 10/30/06
- b. Last Day to File Motion to Add Parties 10/30/06

**4. RULE 26(a)(2) REPORTS FROM EXPERTS<sup>3</sup>**

- a. Plaintiff 3/28/07
- b. Defendant 4/30/07
- c. Counter Reports within 30 days initial report

**5. OTHER DEADLINES**

- a. Discovery to be completed by:
  - Fact discovery 2/28/07
  - Expert discovery 6/29/07
- b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)
- c. Deadline for filing dispositive or potentially dispositive motions 7/30/07

**6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION**

- a. Referral to Court-Annexed Mediation N
- b. Referral to Court-Annexed Arbitration N
- c. Evaluate case for Settlement/ADR on fair
- d. Settlement probability:

**7. TRIAL AND PREPARATION FOR TRIAL:**

- a. Rule 26(a)(3) Pretrial Disclosures<sup>4</sup>

<b>Plaintiffs</b>	<b>11/7/07</b>
<b>Defendants</b>	<b>11/21/07</b>

- b. **Objections to Rule 26(a)(3) Disclosures**  
(if different than 14 days provided in Rule)

**DATE**

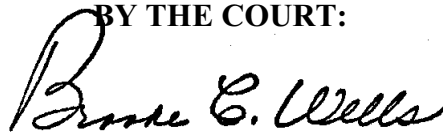
- |    |   |   |
|----|---|---|
| c. | <b>Special Attorney Conference<sup>5</sup> on or before</b> | <b>12/6/07</b>  |
| d. | <b>Settlement Conference<sup>6</sup> on or before</b>       | <b>12/6/07</b>  |
| e. | <b>Final Pretrial Conference</b>                            | <b>2:30 pm 12/20/07</b>                                     |
| f. | <b>Trial</b>  | <b><u>Length</u>      <u>Time</u>      <u>Date</u></b>      |
|    | <b>i. Bench Trial</b>                                       | <b><u>5 days</u>      <u>8:30 am</u>      <u>1/7/08</u></b> |
|    | <b>ii. Jury Trial</b>                                       |   |

**8. OTHER MATTERS:**

**Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.**

**Dated this 11 day of September, 2006.**

**BY THE COURT:**



**Brooke C. Wells**  
**U.S. Magistrate Judge**

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

I:\To be Signed or Filed\True north scheduling order vacating hearing.wpd



# United States District Court

Central Division for the District of Utah

United States of America

v.

## BENCH WARRANT

**Russell M. Escareno**

CASE NUMBER: 2:06-CV-521 TC

To: The United States Marshal  
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest

**Russell M. Escareno**

Name

and bring him or her forthwith to the nearest magistrate to answer a(n)

Failure to Appear

Samuel Alba

Name of Issuing Officer

Chief Magistrate Judge

Title of Issuing Officer

Signature of Issuing Officer

September 11, 2006 at Salt Lake City, Utah

Date and Location

By: Stephanie Schaeffer  
Deputy Clerk

Bail fixed at \$

by

Name of Judicial Officer

### RETURN

This warrant was received and executed with the arrest of the above-named defendant at

DATE RECEIVED

NAME AND TITLE OF ARRESTING  
OFFICER

SIGNATURE OF ARRESTING OFFICER

DATE OF ARREST

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

<p>JEREMY KEE,  Plaintiff,  vs.  R-G CROWN BANK and ROLANDO RODRIGUEZ,  Defendants.</p>	<p>ORDER GRANTING DEFENDANT’S MOTION TO CONSOLIDATE   Case No. 2:06-CV-603 TS  Case No. 2:06-CV-602 DAK</p>
---	---

Upon being apprised of the facts in this action, the Court finds that this action and Case No. 2:06-CV-602 arise from substantially the same transaction or event. Pursuant to DUCiv 42-1, it is therefore

ORDERED that Defendant’s Motion to Consolidate is GRANTED.

It is further

ORDERED that Case No. 2:06-CV-603 TS is henceforth consolidated into Case No. 2:06-CV-602 DAK. All future documents will be filed under Case No. 2:06-CV-602 DAK. No future filings will be made under Case No. 2:06-CV-603 TS, and Case No. 2:06-CV-603 TS shall no longer be used in case headings.

DATED September 11, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", written over a horizontal line.

TED STEWART  
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

<p>JEREMY KEE,  Plaintiff,  vs.  R-G CROWN BANK and ROLANDO RODRIGUEZ,  Defendants.</p>	<p>ORDER GRANTING DEFENDANT’S MOTION TO CONSOLIDATE   Case No. 2:06-CV-603 TS  Case No. 2:06-CV-602 DAK</p>
---	---

Upon being apprised of the facts in this action, the Court finds that this action and Case No. 2:06-CV-602 arise from substantially the same transaction or event. Pursuant to DUCiv 42-1, it is therefore

ORDERED that Defendant’s Motion to Consolidate is GRANTED.

It is further

ORDERED that Case No. 2:06-CV-603 TS is henceforth consolidated into Case No. 2:06-CV-602 DAK. All future documents will be filed under Case No. 2:06-CV-602 DAK. No future filings will be made under Case No. 2:06-CV-603 TS, and Case No. 2:06-CV-603 TS shall no longer be used in case headings.

DATED September 11, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", written over a horizontal line.

TED STEWART  
United States District Judge

James L. Barnett, #7462  
HOLLAND & HART LLP  
Attorneys for Defendants  
60 E. South Temple, Suite 2000  
Salt Lake City, Utah 84111-1031  
Telephone: (801) 799-5826  
Fax: (801) 799-5700  
E-mail: [jbarnett@hollandhart.com](mailto:jbarnett@hollandhart.com)

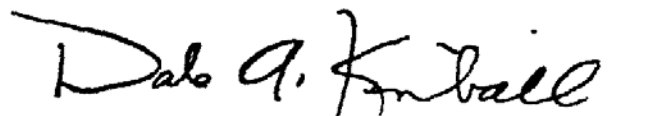
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CHERILYN KELLOGG (n.k.a.) WORSLEY	Civil No. 2:06 CV 00610-DAK
Plaintiff,	
vs.	
METROPOLITAN LIFE INSURANCE COMPANY, and PFIZER ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE PLAN	STIPULATED ORDER EXTENDING TIME TO RESPOND TO COMPLAINT
Defendants.	Judge Dale A. Kimball

Based upon the stipulation of the parties and being otherwise informed in the  
premises, the Court:

HEREBY ORDERS that the time for filing defendants' response to the  
Complaint shall be extended until October 4, 2006.

BY THE COURT:



Dale A. Kimball

APPROVED AS TO  
FORM AND CONTENT:

BRIAN S. KING, ATTORNEY AT LAW

By: /s/ Brian S. King  
Brian S. King  
James L. Harris  
Attorneys for Plaintiff  
*(Original signed document bearing signature of  
Brian S. King is being maintained in the office  
of the Filing Attorney)*  
s/ James L. Barnett

David K. Isom, (Utah Bar # 4773)  
GREENBERG TRAURIG, LLP  
The Tabor Center  
1200 Seventeenth Street  
24th Floor  
Denver, Colorado 80202  
Telephone: (303) 572-6500  
Facsimile: (303) 572-6540

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH  
SEP 11 2006  
BY MARKUS B. ZIMMER, CLERK  
DEPUTY CLERK

Gregory K. Skordas (Utah Bar # 3865)  
Olivia Uitto (Utah Bar # 10649)  
SKORDAS, CASTON & HYDE, LLC  
9 Exchange Place  
Suite 1104  
Salt Lake City, UT 84111  
Telephone: (801) 531-7444  
Facsimile: (801) 531-8885

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

iMergent, Inc., a Delaware corporation, and )  
StoresOnline, Inc., a Delaware corporation, )  
Plaintiffs, )  
v. )  
FRANCINE A. GIANI, et al., )  
Defendants. )

**ORDER FOR PRO HAC VICE  
ADMISSION**

No. 2:06-CV-720 PGC

Judge Paul G. Cassell

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Claude C. Wild III in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 11<sup>th</sup> day of September, 2006.

  
U.S. District Judge



BRETT L. TOLMAN, United States Attorney (#8821)  
LYNDA R. KRAUSE, Assistant United States Attorney (#7433)  
Attorneys for the United States of America  
185 South State Street, Suite 400  
Salt Lake City, Utah 84111  
Telephone: (801) 524-5682  
Facsimile: (801) 524-6924

FILED  
U.S. DISTRICT COURT  
2006 SEP 11 A 10:55

CLERK OF COURT  
BY: \_\_\_\_\_  
DEPUTY CLERK

---

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

---

UNITED STATES OF AMERICA,

Respondent,

vs.

DIANE BENNETT,

Petitioner.

ORDER GRANTING MOTION FOR  
EXTENSION OF TIME

Case No. 2:06-CV-0730  
Related to: 2:03-cr-0608

---

Good cause having been shown, the Motion of the United States of America for an Extension of Time is GRANTED. The United States Attorney's Office is hereby ordered to respond to Plaintiff's Motion to Vacate on or before December 18, 2006.

DATED this 11 day of September, 2006.

BY THE COURT:



Dee Benson

Chief Judge, United States District Court

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

RECEIVED  
FILED  
U.S. DISTRICT COURT  
SEP 08 2006  
OFFICE OF  
JUDGE TENA CAMPBELL  
DISTRICT OF UTAH

TERRY C. TURNER,  
Plaintiff

v.

GOLDEN EAGLE INTERNATIONAL, INC.,  
KEVIN K. PFEFFER,  
H.E. DUNHAM,  
WILLIAM A. JACOBS,  
Defendants.

\* BY: \_\_\_\_\_  
\* DEPUTY CLERK  
\* ORDER FOR PRO HAC VICE  
\* ADMISSION  
\*  
\* Case No. 2:06-CV-738 TC  
\*  
\*  
\*

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of  
DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Michael C. Theis in the United  
States District Court, District of Utah in the subject case is GRANTED.

Dated: this 11 day of Sept, 2006.

  
\_\_\_\_\_  
U.S. District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT  
2006 SEP 11 A 10:23

DISTRICT OF UTAH

JOHN A. CAMPBELL,

Plaintiff,

vs.

CITY OF HACKENSAK, N. J.,

Defendant.

BY: \_\_\_\_\_  
DEPUTY CLERK

ORDER TO SHOW CAUSE

Case No. 2:06 CV 748 TC

The plaintiff John A.. Campbell is hereby ordered to show cause within one month of the date of this order why his complaint should not be dismissed with prejudice because on the face of the complaint, the injuries Mr. Campbell alleges he suffered occurred in 1997, well beyond the four-year statute of limitations.

DATED this 7th day of September, 2006.

BY THE COURT:

*Tena Campbell*

TENA CAMPBELL  
United States District Judge

FILED  
U.S. DISTRICT COURT

2006 SEP 11 P 12:33

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

RECEIVED CLERK

SEP 07 2006

U.S. DISTRICT COURT

DISTRICT OF UTAH  
UNITED STATES OF AMERICA,

DEPUTY CLERK  
Plaintiff,

v.

MARK SIMONS; JOYCE W. SIMONS; SIMONS  
FAMILY TRUST, JOYCE W. SIMONS Trustee;  
SIMONS ENTERPRISES TRUST, JOYCE W. SIMONS  
and MARK SIMONS Trustees; GREENPOINT  
MORTGAGE COMPANY; BANK ONE, UTAH, N.A.;  
J. BARRES JENKINS; AND NORMA C. JENKINS,

Defendants.

ORDER FOR PRO HAC VICE  
ADMISSION

Case No. [New]

Judge Dale A. Kimball  
DECK TYPE: Civil  
DATE STAMP: 09/07/2006 @ 15:51:05  
CASE NUMBER: 2:06CV00750 DAK

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Philip E. Blondin in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 11<sup>th</sup> day of September, 2006.

  
U.S. District Judge

NO FEE REQUIRED

UNITED STATES DISTRICT COURT

FILED

2006 SEP 11 P 12:41  
UTAH

Central Division

District of

Janet Jamison

Plaintiff

V.

Utah Anti-Discrimination and Labor Division et al

Defendant

ORDER ON APPLICATION  
TO PROCEED WITHOUT  
PREPAYMENT OF FEES

C Judge Tena Campbell  
DECK TYPE: Civil  
DATE STAMP: 09/11/2006 @ 12:46:25  
CASE NUMBER: 2:06CV00763 TC

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:


☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 11<sup>th</sup> day of Sept., 2006.

  
Signature of Judge

Magistrate Judge Samuel Alba  
Name and Title of Judge

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

	:	2:06 MJ 86 DON
IN THE MATTER OF THE	:	Assoc.: 2:06 MJ 91 BCW
SEARCH OF THE PREMISES	:	Assoc.: 2:06 MJ 122 BCW
LOCATED AT 4766 S.	:	
HOLLADAY BLVD.,	:	
HOLLADAY, UT 84117.	:	
		ORDER EXTENDING TIME FOR DOCUMENT REVIEW AND ASSERTION OF PRIVILEGE

---

On the motion of the United States, with the stipulation of the respondents, and good cause appearing therefore, the government's motion to extend time in which the parties may complete their review of documents is GRANTED. The new schedule shall be as follows:

September 13, 2006: Government completes review of documents held at United States Attorney's Office (USAO), and identifies/returns documents it concedes are privileged; respondents complete review of documents held at the IRS office and assert privilege in any documents they consider privileged.

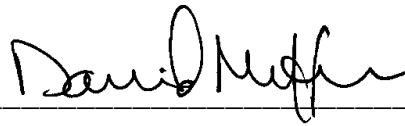
October 11, 2006: Respondents complete review of documents held at the USAO and assert privilege in any documents they consider privileged and which

the government did not concede privilege on September 13; government completes review of documents held at the IRS office in which privilege has been asserted and concedes or disputes the assertion of privilege.

October 12-24: Respondents and government consult in good faith to reach accommodation on application of privilege in disputed documents.

October 25: Disputes over any remaining assertions of privilege may be submitted to Court.

DATED this 7th day of September, 2006.

A handwritten signature in black ink, appearing to read "David Nuffer", is written over a horizontal line.

DAVID NUFFER  
United States Magistrate Judge

BY: J. J. CLARK

## CENTRAL DIVISION

Case No. 2:97-CR-00115

Judge Dee Benson  
DECK TYPE: Criminal  
DATE STAMP: 09/11/2006 @ 11:22:07  
CASE NUMBER: 2:97CR00115 DB